

RAL

RESOLUTION NO. _____

**A RESOLUTION OF THE MILPITAS REDEVELOPMENT AGENCY
FINDING THAT THE IMPLEMENTATION OF THE PROPOSED OWNER
PARTICIPANT AGREEMENT BETWEEN THE AGENCY AND SHAPELL INDUSTRIES
OF NORTHERN CALIFORNIA, LLC WILL NOT HAVE A SIGNIFICANT EFFECT
ON THE ENVIRONMENT AND APPROVING AND AUTHORIZING THE EXECUTION
OF SAID OWNER PARTICIPANT AGREEMENT**

WHEREAS, the Milpitas Redevelopment Agency ("the Agency") is engaged in activities necessary to execute ~~and~~ implement the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 ("the Project"); and

WHEREAS, in order to implement the Redevelopment Plan, the Agency proposes to participate, pursuant to the terms and provisions of an owner Participant Agreement ("the Agreement"); and

WHEREAS, the Participant has presented plans and qualifications to ensure the redevelopment of the Property consistent with the provisions of the Project Area; and

WHEREAS, on March 24, 2004, the Planning Commission did find that the proposed Project conforms to the intent and specific requirements of the Milpitas General Plan and the Town Center zoning district; and

WHEREAS, the Planning Commission did find that the proposed project will not have any significant environmental effects pursuant to the California Environmental Quality Act (CEQA), in that the proposed project is consistent with the Milpitas General Plan and Zoning Ordinance and has been certified on March 24, 2004; and

WHEREAS, the Agency has duly considered all terms and conditions of the proposed project and believes that the redevelopment of the Property pursuant to the proposed Agreement is in the best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law requirements.

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency, as follows:

1. The Agency hereby finds and determines that the proposed project will not have any significant negative environmental impacts and no subsequent Environmental Impact Report is necessary or required.
2. The Agency finds that the proposed Agreement contains all the provisions required by law.
3. The Agency hereby approves the Agreement and authorizes the execution of said Agreement and all other documents necessary to carry out the Agreement.

PASSED AND ADOPTED this 16th day of August 2005, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, Agency Secretary

Jose S. Esteves, Chairperson

APPROVED AS TO FORM:

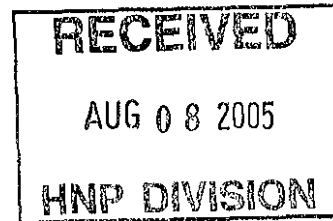
Steven T. Mattas, Agency Counsel



RA8

August 9th, 2005

Mr. Felix Reliford
Principal Housing Planner
City of Milpitas
4455 East Calaveras Blvd.
Milpitas, Ca. 95035



RE: Owner Participation Agreement
Milpitas Town Center

Dear Mr. Reliford:

This letter shall confirm that the terms of the Owner Participation Agreement between Shapell Industries, Inc., a Delaware Corporation and the Redevelopment Agency of the City of Milpitas for the residential component of the redevelopment of the Milpitas Town Center are acceptable.

We are prepared to execute the agreement.

Thank you for your help and cooperation with this matter

Sincerely,

SHAPELL HOMES

J.C. Truebridge
President

cc: Kelly Erardi
Ken Cox

OWNER PARTICIPATION AGREEMENT

by and between

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and

**SHAPELL INDUSTRIES OF NORTHERN CALIFORNIA,
a division of SHAPELL INDUSTRIES, INC., a Delaware corporation**

TABLE OF CONTENTS

I.	[§100] SUBJECT OF AGREEMENT	2
[§101]	<u>PURPOSE OF THIS AGREEMENT; MEMORANDUM OF UNDERSTANDING.</u>	2
[§102]	<u>THE REDEVELOPMENT PLAN.</u>	2
[§103]	<u>THE PROJECT AREA.</u>	2
[§104]	<u>THE SITE</u>	3
[§105]	<u>THE AGENCY.</u>	3
[§106]	<u>THE PARTICIPANT/OWNER OF THE SITE.</u>	3
[§107]	<u>TRANSFER AND ASSIGNMENT.</u>	3
II.	[§200] DEVELOPMENT OF THE SITE.....	5
[§201]	<u>DEVELOPMENT OF THE SITE BY THE PARTICIPANT</u>	5
[§202]	<u>CONSTRUCTION OF PUBLIC IMPROVEMENTS BY THE PARTICIPANT</u>	5
[§203]	<u>CONSTRUCTION OF AFFORDABLE HOMES BY PARTICIPANT</u>	5
[§204]	<u>AGENCY FINANCIAL ASSISTANCE.</u>	5
[§205]	<u>SCOPE OF DEVELOPMENT/TIME OF CONSTRUCTION.</u>	6
[§206]	<u>COMMENCEMENT OF CONSTRUCTION PURSUANT TO PLANS.</u>	6
[§207]	<u>CITY REVIEW OF PLANS, DRAWINGS AND RELATED DOCUMENTS.</u>	6
[§208]	<u>COST OF CONSTRUCTION.</u>	7
[§209]	<u>CITY AND OTHER GOVERNMENTAL AGENCY PERMITS AND FEES.</u>	7
[§210]	<u>CONSTRUCTION SCHEDULE.</u>	7
[§211]	<u>INSURANCE.</u>	7
[§212]	<u>HAZARDOUS MATERIALS.</u>	8
[§213]	<u>LOCAL STATE AND FEDERAL LAWS.</u>	9
[§214]	<u>ANTI-DISCRIMINATION DURING CONSTRUCTION.</u>	9
[§215]	<u>TAXES, ASSESSMENTS, ENCUMBRANCES AND LIENS.</u>	9
[§216]	<u>ENCUMBRANCES, DEEDS OF TRUST, OTHER FINANCING.</u>	10
[§217]	<u>HOLDER NOT OBLIGATED TO CONSTRUCT.</u>	10
[§218]	<u>NOTICE OF DEFAULT TO MORTGAGEE, DEED OF TRUST OR OTHER SECURITY INTEREST HOLDERS; RIGHT TO CURE.</u>	10
[§219]	<u>CERTIFICATE OF COMPLETION.</u>	11
[§220]	<u>REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND CONDITIONS AFFECTING REAL PROPERTY.</u>	12
III.	[§300] USE OF THE SITE	12
[§301]	<u>GENERAL USE OF THE SITE.</u>	12
[§302]	<u>OBLIGATION TO REFRAIN FROM DISCRIMINATION.</u>	12
[§303]	<u>FORM OF NONDISCRIMINATION AND NONSEGREGATION CLAUSE.</u>	13
[§304]	<u>RIGHTS OF ACCESS.</u>	13
[§305]	<u>EFFECT AND DURATION OF COVENANTS.</u>	14
[§306]	<u>INDEMNITY.</u>	14
IV.	[§400] DEFAULT, REMEDIES.....	14
[§401]	<u>DEFAULTS.</u>	14
[§402]	<u>LEGAL ACTIONS.</u>	15
[§403]	<u>APPLICABLE LAW.</u>	15
[§404]	<u>AGENCY TERMINATION OF AGREEMENT.</u>	15
V.	[§500] GENERAL PROVISIONS.....	16
[§501]	<u>CONFLICTS OF INTEREST.</u>	16
[§502]	<u>NON-LIABILITY OF AGENCY OFFICIALS AND EMPLOYEES.</u>	16
[§503]	<u>ENFORCED DELAY EXTENSION OF TIMES OF PERFORMANCE.</u>	16
[§504]	<u>NOTICES AND COMMUNICATIONS.</u>	1746
[§505]	<u>OWNERSHIP OF DOCUMENTS.</u>	1847
[§506]	<u>MODIFICATIONS.</u>	1847

[§507]	<u>BINDING EFFECT OF AGREEMENT.</u>	1817
[§508]	<u>ASSURANCES TO ACT IN GOOD FAITH.</u>	18
[§509]	<u>SEVERABILITY.</u>	18
[§510]	<u>INTERPRETATION.</u>	18
[§511]	<u>ENTIRE AGREEMENT.</u>	18
[§512]	<u>WAIVER.</u>	1918
[§513]	<u>AGENCY INDEMNITY OF CITY.</u>	19
[§514]	<u>COUNTERPARTS.</u>	19
[§515]	<u>AUTHORITY.</u>	19
[§516]	<u>ATTACHMENTS</u>	19
VI.	[§600] TIME FOR EXECUTION OF AGREEMENT BY AGENCY; RECORDATION	2019
ATTACHMENT NO. 1		21
ATTACHMENT NO. 2		22
ATTACHMENT NO. 3		23
ATTACHMENT NO. 4		24
ATTACHMENT NO. 5		25
ATTACHMENT NO. 6		27
ATTACHMENT NO. 7		28
ATTACHMENT NO. 8		30

OWNER PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of _____ 2005, by and between the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public body, corporate and politic (the "Agency") and SHAPELL INDUSTRIES, INC., a Delaware Corporation (the "Participant") (collectively "Parties").

RECITALS

A. Agency is a public body, corporate and politic, exercising governmental functions and powers and organizer and administrator of the Community Redevelopment Law of the State of California (California Health and Safety Code Section 33000 *et seq.*

B. Participant is the owner of certain real property located at [add address], Milpitas, California, known generally as Milpitas Town Center ("Site") and more particularly described in the legal description in Attachment No. 1 attached hereto and incorporated herein by this reference and as diagramed on the map in Attachment No. 2 attached hereto and incorporated herein by this reference. Participant has proposed on the Site a sixty-five unit development project consisting of for-sale units of which sixteen (16) three-bedroom units shall be affordable to moderate-income persons and households (hereinafter the "Project").

C. Site is located within the Milpitas Redevelopment Plan Project Area No. 1. (the "Project Area"), which was approved and adopted by the City Council of the City of Milpitas by Ordinance No. 192 and as subsequently amended by means of ordinances of the City Council.

D. In conjunction with the Project, Participant intends to construct, or fund the construction of, certain public improvements and certain pedestrian improvements on other property owned by Participant ("the Improvements") that the Agency finds to be of significant benefit to the Project Area.

E. To effectuate the Redevelopment Plan for the Project Area, the Agency desires to assist Participant in the development of the Project by making certain financial assistance, as described in this Agreement, available to Participant for the Project and to provide for the development of the Property in conformity with the Redevelopment Plan.

F. Among the Agency's goals is to create affordable housing opportunities for persons, families, and households of very low, low, and moderate incomes. Pursuant to this Agreement and the Regulatory Agreement attached hereto as Attachment No. 3 and incorporated herein by this reference ("Regulatory Agreement"), it is contemplated by the Parties that no fewer than sixteen (16) of the residential units to be constructed as part of the Project ("Affordable Homes") will be made available at affordable housing cost to moderate-income households. In exchange for the Participant's construction of the Improvements, the Agency will use Agency affordable housing funds to subsidize the construction, acquisition, or rehabilitation of four (4) very low-income units at other locations ("the Rehabilitation"). In total, the construction, acquisition, or rehabilitation of these twenty (20) affordable units is equal to more

than fifteen percent (15%) of the total units to be constructed in the Project and the four very low-income units are equal to forty percent (40%) of fifteen percent (15%) of the total number of units in the Project.

G. The parties estimate the value of the Improvements to be \$391,260, and the Agency estimates the cost of the Rehabilitation to be less than \$391,260.

H. Thus, the Agency's financial contribution to the Project is solely related to the production of affordable housing pursuant to Health and Safety Code section 33334.2, and, excepting that contribution, the construction of the Project is not paid for in whole or in part with public funds but rather is entirely privately funded..

I. Agency has determined that providing assistance to Participant for the Project is in the best interest of the City and the welfare of its citizens and will help the City and the Agency meet their affordable housing goals.

NOW, THEREFORE, in consideration of the foregoing Recitals and the covenants and promises hereinafter contained, and for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Agency and Participant hereby agree as follows:

AGREEMENT

I. [§100] SUBJECT OF AGREEMENT

[§101] Purpose of This Agreement; Memorandum of Understanding.

A. The purpose of this Agreement is to effectuate the Redevelopment Plan for the Project Area by providing for the development of certain real property located within the Project Area, at Milpitas, and more particularly described in Attachment No. 1. (the "Site"), as well as assisting the Agency and the City in the provision of affordable housing for very low, low and moderate income persons and households within the City.

[§102] The Redevelopment Plan.

This Agreement is subject to the provisions of the Redevelopment Plan that was approved and adopted by the City Council of the City of Milpitas on September 21, 1976, by Ordinance No. 192 and restated and amended on June 17, 2003 by Ordinance No. 192.14. The Redevelopment Plan, as it now exists and as it may be subsequently amended, is incorporated herein by reference and made a part hereof as though fully set forth herein. Any amendments to the Redevelopment Plan after the date of this Agreement which changes the uses or development permitted on the Site or which otherwise change the restrictions or controls that apply to the Site or otherwise affect the Participant's obligations or rights with respect to the Site shall require the written consent of the Participant.

[§103] The Project Area

The Project Area is located in the City of Milpitas, California, and the exact boundaries of the Project Area are specifically described in the eighth amendment of the Redevelopment Plan which is available for public inspection in the Office of the Milpitas City Clerk at 455 East Calaveras Boulevard, Milpitas, California 95035.

[§104] The Site

The Site is that certain real property located within the Project Area and as more particularly described in the "Legal Description of the Site," attached hereto as Attachment No. 1. The Site is shown on the "Map of the Site," attached hereto as Attachment No. 2 and incorporated herein by reference.

[§105] The Agency.

The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*).

The principal office of the Agency is located at 455 East Calaveras Boulevard, Milpitas, California 95035.

"Agency," as used in this Agreement, includes the Redevelopment Agency of the City of Milpitas and any assignee of or successor to its rights, powers and responsibilities.

[§106] The Participant/Owner of the Site.

The Participant is Shapell Industries, Inc., a Delaware Corporation. The principal office of the Participant is located at 100 North Milpitas Blvd., Milpitas, California 95035. The Participant qualifies as an Owner Participant as that term is used in the Redevelopment Plan and Community Redevelopment Law, Section 33000 *et seq.*

[§107] Transfer and Assignment.

A. The qualifications and identity of the Participant are of particular concern to the Agency, and it is because of such qualifications and identity that the Agency is entering into this Agreement with the Participant.

B. Prior to the Agency's issuance of a Certificate of Completion as set forth in Section 219, Participant shall not assign or Transfer this Agreement, or any of Participant's rights hereunder, or any interest in the Site or in the Project to be constructed thereon, directly or indirectly, voluntarily or by operation of law, without the prior written approval of the Agency, which approval may be withheld in Agency's sole and absolute discretion, and such purported transfer without such approval shall be null and void. Notwithstanding the foregoing, the Agency shall not withhold its consent to a transfer from Participant to an entity that is controlled by or is under common control with Participant.

"Transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the Project thereon. A Transfer shall also include the transfer to any person, entity, or group of persons or entities acting in concert of more than fifty-one percent (51%) (in aggregate) of the present ownership and/or control of any person or entity constituting Participant, taking all transfers into account on a cumulative basis.

Notwithstanding the foregoing above, a transfer of ownership interests in Shapell Industries, Inc. to or among the Nathan Shapell Family, the David Shapell Family and/or the Max Webb Family shall be permitted if and only if the following is true immediately after such transfer: the Nathan Shapell Family, David Shapell Family and Max Webb Family each continue to own, directly or indirectly an ownership interest in Shapell Industries, Inc., and collectively continue to own, directly or indirectly, more than a 50% interest in Shapell Industries, Inc., provided that if at any time thereafter, the foregoing clause does not continue to be true, a change in the proportionate ownership of Shapell Industries, Inc. shall be deemed to have taken place in violation of this provision. For purposes hereof, the "Nathan Shapell Family" shall mean Nathan Shapell, his spouse, his descendants and their spouses, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties. For purposes hereof, the "David Shapell Family" shall mean David Shapell, his spouse, his descendants and their spouses, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties. For purposes hereof, the "Max Webb Family" shall mean Max Webb, his spouse, his descendants and their spouses, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties.

Furthermore, notwithstanding the foregoing, the owners of Shapell Industries, Inc. shall be permitted to grant or permit to exist a security interest in, or other encumbrance on, the ownership interests in Shapell Industries, Inc., provided that the following would be true immediately after any transfer of ownership due to the secured party's foreclosure of any such security interest or encumbrance: The the Nathan Shapell Family, David Shapell Family and Max Webb Family would each continue to own, directly or indirectly, free and clear of any security interest, an ownership interest in Shapell Industries, Inc., and collectively continue to own, directly or indirectly, free and clear of any security interest, more than a 50% interest in Shapell Industries, Inc.

C. This Agreement may be terminated by the Agency pursuant to Section 404 hereof, if, without the prior written approval of the Agency, Participant assigns or Transfers this Agreement or the Site prior to the Agency's issuance of a Certificate of Completion. If the Agency terminates this Agreement because of a change in the ownership or control of Participant or the Site, without prior written approval of the Agency, the obligations and responsibilities of the parties shall be as set forth in the Regulatory Agreement and Declaration of Covenants and Restrictions Affecting Real Property ("Regulatory Agreement"), restricting the Site to the use set forth in Section 300 of this Agreement.

II. [§200] DEVELOPMENT OF THE SITE

[§201] Development of the Site by the Participant

The Participant shall develop the Site according to the Scope of Development and the Project Description conceptual Site Plan and Elevations, thereon set forth in Attachment No. 4, attached hereto and incorporated herein by this reference.

[§202] Construction of Public Improvements by the Participant

Participant shall construct the public improvements described in Attachment No. 5 ("the Improvements") and as required by Attachment No. 5. Except as otherwise provided in Attachment No. 5, all costs of designing, developing, and constructing the Improvements shall be borne solely by Participant and shall not be an obligation of the Agency. In lieu of constructing the Improvements as required by this section 202, Participant may pay the Agency to complete the Improvements, if authorized by Attachment No. 5.

[§203] Construction of Affordable Homes by Participant

A. Participant covenants and agrees for itself, its successors, its assigns and every successor in interest that no fewer than sixteen (16) of the residential units to be constructed as part of the Project will be made available to moderate-income households in accordance with the terms and conditions of the Regulatory Agreement. The covenants of the Regulatory Agreement shall run with the land and shall remain in effect for the periods of time specified therein. The Regulatory Agreement shall be recorded against the Property.

B. Participant shall be required to submit to the Agency a Final Distribution Plan that indicates the location of the Affordable Homes within the Project. The Final Distribution Plan is subject to the approval of the Executive Director of the Agency, or his or her designee. However, the parties agree that the affordable homes will be distributed throughout the development as conceptually shown on the Preliminary Distribution Plan in Attachment No. 6 attached hereto and incorporated herein by this reference.

C. The Agency and Participant hereby declare their understanding and intent that the burdens of the covenants set forth herein touch and concern the land in that the Participant's interest in the Property is rendered less valuable thereby. The Agency and Participant hereby further declare their understanding and intent that the benefits of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by persons to whom the Affordable Homes will be affordable, the future owners of each Affordable Home ("Owner(s)").

[§204] Agency Financial Assistance.

A. In exchange for the affordability restrictions on the sixteen (16) Affordable Homes, Agency shall, upon issuance of an Approval of Final Inspection by the City, deposit Fifty Thousand Dollars (\$50,000) for each Affordable Home into the Agency's silent-second mortgage program whereby the moneys deposited shall be used to provide silent second mortgages to purchasers of the

Moderate-Income Affordable Homes. The silent second mortgages will be effected as set forth in the Regulatory Agreement and at the time of the sale of each Affordable Home, and the Agency shall deliver to escrow the sum of Fifty Thousand Dollars (\$50,000) on behalf of the homebuyer for the benefit of the Participant as a portion of the purchase price for each Affordable Home. The Agency's silent second mortgage shall be secured by a Promissory Note and a Subordinate Deed of Trust ("Loan Documents") as required by the Regulatory Agreement. The Loan Documents shall be executed and recorded with the Grant Deed.

B. In the event that Participant is unable to entice a qualified buyer to purchase any particular Affordable Home at a sales price that is equal to or more than the following Minimum Sales Prices, the Agency and Participant shall provide funds (in equal shares) to increase the amount of the Agency-provided silent second mortgages by an amount necessary to entice a qualified buyer to purchase the unit. Participant may choose to contribute its share by reducing the sales price of the unit. The "Minimum Sales Prices" shall be as follows: 3 bedroom units, \$370,000. In the event that similarly sized market-rate units within the Project are sold at prices that are less than the Minimum Sales Price, neither Shapell nor the the Agency shall have any obligation to increase the amount of the silent-second contribution as otherwise required by this subsection.

C. Agency, itself or in conjunction with a non-profit housing developer, shall rehabilitate a minimum of four (4) units of existing housing and subject such units to a regulatory agreement that requires such units, for a period not less than 25 years, to be leased only to Very Low Income households.

[§205] Scope of Development/Time of Construction.

The Participant agrees that the Site and the Improvements shall be developed in accordance with the Scope of Development as set forth in Attachment No. 3 within the time set forth in the Schedule of Performance, set forth in Attachment No. 7, attached hereto and incorporated herein by this reference.

[§206] Commencement of Construction Pursuant to Plans.

The Participant shall commence construction of the Project no later than the date set forth in the Schedule of Performance, Attachment No. 7, and only if Participant has met the following conditions:

(a) Participant has the funds or firm commitments for the funds that are required to construct the Project in a timely and proper manner and to satisfy all of the covenants in this Agreement.

(b) Participant shall prepare and submit to the City preliminary and final landscaping and finish grading plans, and Participant has received all necessary governmental permits and land use approvals from the City to allow construction of the Project, or portion thereof, in accordance with the plans and specifications (or other construction documents).

[§207] City Review of Plans, Drawings and Related Documents.

The City and the Participant shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City can receive prompt consideration.

[§208] Cost of Construction.

The cost of developing the Site and constructing the Project thereon shall be borne by the Participant, except to the extent of Agency Financial Contribution. The Agency and the Participant shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

[§209] City and Participant Governmental Agency Permits and Fees.

Prior to the commencement of construction on the Site, or any portion thereof, the Participant shall, at its own expense, secure, or cause to be secured, any and all permits which may be required by the City or any other governmental agency affected by such construction. The Agency shall provide all proper assistance to the Participant in securing these permits.

[§210] Construction Schedule.

Participant shall commence and complete all construction and development within the time specified in the Schedule of Performance set forth in Attachment No. 7 or such reasonable extension of these times as provided in Section 503 of this Agreement.

[§211] Insurance.

Commencing with the Effective Date, hereinafter defined, the Participant shall maintain the following minimum insurance coverage, issued by an insurer and in a form reasonably acceptable to the Agency:

- (i) A policy of Workers' Compensation Insurance in such amounts as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for the Participant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persona retained by Participant in the course of carrying out the work or services contemplated in this Agreement.
- (ii) Comprehensive General Liability Insurance written on a per occurrence basis in an amount not less than: for death and bodily injury, with (i) combined single limit of One Million Dollars (\$1,000,000) or Five Hundred Thousand Dollars (\$500,000) per person and One Million Dollars (\$1,000,000) in the aggregate, and (b) for property damage, One Million Dollars (\$1,000,000) per occurrence. Property insurance covering the Project Site covering all risks of loss, including flood, for 100% of the replacement value, with deductible, if any, acceptable to the Agency.

(iii) Comprehensive Automotive Insurance written on a per occurrence basis in an amount no less than either (i) bodily injury liability limits of Five Hundred Thousand dollars (\$500,000) per person and One Million Dollars (\$1,000,000) per occurrence and property damage liability of Five Hundred Thousand Dollars (\$500,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate or (ii) combined single limit liability of One Million Dollars (\$1,000,000). Said policy shall include coverage for owned, non-owned, leased, and hired cars.

The required insurance shall be provided under an occurrence form, and the Participant shall maintain such coverage continuously throughout the term of this Agreement. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that ~~claims investigation or legal defense costs be included~~ in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above. Comprehensive General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as additional insured the Agency, the City and their respective board members, officers, agents, and employees. All policies and bonds shall be endorsed to provide thirty (30) days prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to the Agency pursuant to 504 below. Upon the Agency's request at any time during the term of this Agreement, Participant shall provide certificates of insurance, in a form and with insurers reasonable acceptable to the Agency, evidencing compliance with the requirements of this Section 209. Notwithstanding anything to the contrary in the foregoing, provided that the Participant maintains a program of self insurance is equal to or greater than the above liability limits and provided the Participant otherwise complies with the other requirements of this Section 209, the Participant may choose, at its discretion, to self-insure in lieu of issuance of the above-listed policies.

If a holder of a Security Financing Interest requires greater insurance coverage, then such greater coverage shall apply in the place of the coverage described above for purposes of this Section 209.

[§212] Hazardous Materials.

A. The Participant shall not use, generate, manufacture, store, or dispose of, on, under, or about the Site, or transport to or from the Site, any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including (without limitation) any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to as "Hazardous Materials") except such of the foregoing as may be customarily and lawfully kept and used in and about residential property and in construction thereof.

The Participant shall immediately advise the Agency in writing if at any time it receives written notice of (a) any and all enforcement, cleanup, removal, or other governmental or regulatory actions instituted, completed, or threatened against the Participant or the Site pursuant to any applicable federal, state, or local laws, ordinances, or regulations relating to any Hazardous Materials ("Hazardous Materials Law"); (b) all claims made or threatened by any

third party against the Grantee or the Property relating to damage, contribution, cost recovery compensation, loss, or injury resulting from any Hazardous Materials (the matters set forth in clauses (a) and (b) above are referred to as "Hazardous Materials Claims"); and (c) the Participant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Site that could cause the Site or any part thereof to be classified as "border-zone property" under California Health and Safety Code Sections 25220 *et seq.* or corresponding regulations, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability, or use of the Site under any Hazardous Materials Law.

B. The Participant shall indemnify, defend (with counsel reasonably chosen by the Agency, at the Agency's option), and hold harmless the Agency and its directors, officers, employees, and agents from and against any loss, damage, claim, expense, or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on or under the Site, including (without limitation): (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup, or detoxification of the Site and the preparation and implementation of any closure, remedial, or other required plans; and (c) all reasonable costs and expenses incurred by the Agency in connection with clauses (a) and (b), including (but not limited to) reasonable attorneys' fees. This paragraph shall survive termination of this Agreement.

[§213] Local State and Federal Laws.

The Participant shall carry out the construction of the Project in conformity with all applicable laws, including all applicable federal and state labor laws and standards. The Participant agrees to defend, indemnify, protect and hold harmless the Agency and the City and their officers, employees, and agents from, regarding and against any all liabilities, obligations, orders, claims, damages, fines, penalties and expenses of any kind whatsoever, together with fees (including, without limitation, reasonable attorneys' fees), whenever arising resulting from or in connection with Participant's obligation to comply with all laws with respect to the construction of the Project, including, without limitation, all applicable federal and state labor laws and standards.

[§214] Anti-discrimination During Construction.

The Participant, for itself, its successors and assigns, agrees that in the construction of the Project provided for in this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual preference, marital status, ancestry or national origin.

[§215] Taxes, Assessments, Encumbrances and Liens.

The Participant shall pay prior to delinquency all real estate property taxes and assessments assessed and levied on or against the Site. Upon failure to so pay, Participant shall remove, or shall have removed, any levy, or attachment made on the Site, or shall assure the satisfaction thereof within a reasonable time, but in any event, prior to the sale thereunder. Nothing herein contained shall be deemed to prohibit Participant from contesting the validity or

amounts of any tax assessment, encumbrance or lien, or to limit the remedies available to Participant in respect thereto.

[§216] Encumbrances, Deeds of Trust, Other Financing.

Prior to the issuance by the Agency of a Certificate of Completion for the Site or portion of the Site, pursuant to Section 219, Participant shall not, except as expressly permitted by Section 107 of this Agreement, sell, transfer, convey, assign or lease the whole or any part of the Site or the buildings or improvements thereon without the prior written approval of the Agency. This prohibition shall not apply subsequent to the issuance of the Certificate of Completion for the Site or portion of the Site. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site or to prohibit or restrict the leasing of any part or parts of a building or structure when the project and improvements are completed.

Except as otherwise provided in this Agreement or in a separate written agreement by the Agency, no such transfer, assignment or approval by the Agency shall be deemed to relieve Participant or any other party from any obligations under this Agreement until completion of development as evidenced by the issuance of the Certificate of Completion.

Mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing the Project improvements are permitted before issuance of a Certificate of Completion. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

[§217] Holder Not Obligated to Construct.

The holder of any mortgage, deed of trust or other security interest pertaining to the Site shall in no way be obligated by the provisions of this Agreement to construct, or complete such construction of, the Project, or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

[§218] Notice of Default to Mortgagee, Deed of Trust or Other Security Interest Holders; Right to Cure.

Whenever the Agency shall deliver any notice or demand to the Participant with respect to any breach or default by the Participant in the completion of construction of the Project, the Agency shall at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest pertaining to the Site (who has previously made a request therefore), a copy of such notice or demand. Each such holder shall (insofar as the rights of the Agency are concerned) have the right, at its option within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the

construction of the improvements or the completion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made), without first having expressly assumed the Participant's obligations to the Agency by written agreement satisfactory to the Agency. The holder in that event must agree to complete, in the manner provided in this Agreement, the construction of the Project to which the lien or title of such holder relates, and submit evidence satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing the Project shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency.

[§219] Certificate of Completion.

Construction and development of the Project will be in two phases. Phase 1 of the project is the development of a Safeway Supermarket and related commercial development, and Phase 2 of the project is the development of a 65-unit residential project. The obligations of this Agreement related to Phase 1 of the Project are the requirements set forth in Attachment Nos. 5 and 7 related to the construction of the Private Improvements and Off-Site Public Improvements. Promptly after the satisfaction of those obligations associated with Phase 1 by the Participant, and upon the written request by the Participant, the Agency shall furnish the Participant with a Certificate of Completion for Phase 1, in the form attached hereto as Attachment No. 8 and incorporated herein by reference. Promptly after the completion of the construction of the Project by the Participant, and upon the written request by the Participant, the Agency shall furnish the Participant with a Certificate of Completion for the remainder of the Site, in the form attached hereto as Attachment No. 8 and incorporated herein by reference.

The Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction of the Project required by this Agreement upon the Site and of full compliance with the terms hereof related to the Site. After issuance of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the portion of the Site covered by said Certificate of Completion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the deed, lease, mortgage, deed of trust, contract or other instrument of transfer in accordance with the provisions of Sections 301-306 of this and the Regulatory Agreement pursuant to Section 218 of this Agreement. Except as otherwise provided herein, after the issuance of the Certificate of Completion for the applicable portion of the Site, neither the Agency, the City or any other person shall have any rights, remedies or controls with respect to the applicable portion or portions of the Site that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement, and the respective rights and obligations of the parties with reference to the Site shall be as set forth in the deed, lease, mortgage, deed of trust, contract or other instrument of transfer in accordance with the provisions of Sections 301-306 of this Agreement and the Regulatory Agreement pursuant to Section 218 of this Agreement.

The Certificate of Completion shall not be withheld or delayed by the Agency, unless the Participant shall have failed to satisfactorily complete the construction of the Project in

substantial compliance with the terms and provisions hereof and the approved architectural, landscape, site and construction plans for development of the Site. Upon issuance of the Certificate of Completion, the respective rights and obligations of the parties shall be limited to those set forth in the Regulatory Agreement, as described in Section 218 of this Agreement.

The Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with or satisfaction of any obligation of the Participant to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the construction of the Project or any part thereof. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

[§220] Regulatory Agreement and Declaration of Covenants and Conditions Affecting Real Property.

Concurrently with the execution of this Agreement, the Participant and the Agency have executed a Regulatory Agreement in the form attached hereto as Attachment No. 3 and attached hereto, and incorporated herein by reference, which provides for certain covenants and restrictions conditions on the part of the Participant and subsequent owners of affordable homes built on the site consistent with the terms and purpose of this Sections 301 thru 306 of this Agreement. The Agency is authorized to, and shall, record the Regulatory Agreement upon mutual execution of this Agreement by the parties.

III. [§300] USE OF THE SITE

[§301] General Use of the Site.

The Participant covenants and agrees for itself, its successors, assigns and every successor in interest to the Site, or any part thereof, that there shall be sixteen (16) units constructed on the Site that are reserved for moderate-income households and that such Affordable Homes constructed on the Site shall be used only for owner occupied, single family dwelling units restricted to moderate-income persons and households in accordance with this Agreement, the Regulatory Agreement, and the Redevelopment Plan. The foregoing covenant shall run with the land according to the terms of the Regulatory Agreement, Attachment No.3.

[§302] Obligation to Refrain from Discrimination.

The Participant covenants and agrees for itself, its successors, assigns and every successor in interest to the Participant's interest of the Site, or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin physical or mental handicap or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Participant's interest of the Site, nor shall the Participant themselves, or any person claiming under or through them, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Participant's interest of the Site. The foregoing covenants shall run with the Participant's interest of the Site.

[§303] Form of Nondiscrimination and Nonsegregation Clause.

The Participant shall refrain from restricting the rental, sale or lease of the Participant's interest of the Site on the basis of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry of any person. All such deeds, leases or contracts other than warehouse receipts or contracts for the use of space for storage executed after the date of this Agreement shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, physical and mental handicap national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, physical and mental handicap, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of any persons or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, physical or mental handicap national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

[§304] Rights of Access.

For the purposes of determining whether the Project has been completed in accordance with this Agreement, after providing Participant with notice, representatives of the Agency and the City shall have the reasonable right of access to the Site at all reasonable times, without charges or fees for the purpose of inspection of the Site for compliance with this Agreement. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency. The right of entry shall be at the sole risk and expense of the Agency or City and any damage to the Site, or to the improvements constructed thereon caused by the Agency or City shall promptly be repaired at the sole cost and expense of the Agency or City.

[§305] Effect and Duration of Covenants.

The covenants contained in Section 301 of this Agreement shall remain in effect for a period of Forty-Five (45) years commencing upon recordation of the Regulatory Agreement. The covenants against discrimination contained in Sections 302 and 303 of this Agreement shall remain in effect in perpetuity. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Participant and any successors and assigns to the Participant's interest of the Site or any part thereof, and the tenants, lessees, subtenants, sublessees and vendees of the Site, for the benefit of and in favor of the Agency, its successors and assigns, the City and any successor in interest thereto. Concurrently with its execution of this Agreement, the Participant has executed the Regulatory Agreement, Attachment No. 3 which provides for the covenants contained in this Agreement. The Agency is authorized to and shall record the Regulatory Agreement upon issuance of the Certificate of Completion.

[§306] Indemnity.

The Participant shall indemnify, defend (with counsel reasonably chosen by Agency, at the Agency's option), and hold the Agency, the City, and their employees, officers, agents, and board members harmless against all claims which arise out of or in connection with the ownership, development, or construction on, or in connection with the Site (including, without limitation, construction of the Project) by the Participant, contractors, subcontractors, agents, employees, or prospective buyers and subsequent owners of any portion of the Site. This indemnity shall not extend to any claim arising solely from the Agency's or City's gross negligence or willful misconduct or the Agency's failure to perform its obligations under this Agreement. This Section 306 shall survive the termination of this Agreement.

IV. [§400] DEFAULT, REMEDIES

[§401] Defaults.

Failure or delay by either party to perform any material term or provision of this Agreement constitutes a default under this Agreement. The non-defaulting party shall notify the defaulting party that a default exists and that the defaulting party must cure or commence to cure same within thirty (30) days of receipt of the notice of default. The party who so fails or delays must within thirty (30) days of receipt of the notice of default, commence to cure, correct or

remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default. Any failure or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any section's or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

[§402] Legal Actions.

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California, in any other appropriate court in that county, or in the appropriate Federal District Court in the State of California.

The non-defaulting party may also, at its option, cure the breach and sue in any court of proper jurisdiction to collect the reasonable costs incurred by virtue of curing or correcting the defaulting party's breach. Further, the non-defaulting party may file legal action to require the defaulting party to specifically perform the terms and conditions of this Agreement, or the Regulatory Agreement, Attachment No. 3.

In no event shall damages be awarded against City, Agency or Participant upon an event of default or upon termination of this Agreement.

[§403] Applicable Law.

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

[§404] Agency Termination of Agreement.

Prior to Agency issuance of a Certificate of Completion for the Site, the Agency may terminate this Agreement for any of the reasons set forth in subsections (a) through (e) below:

(a) Except as permitted under this Agreement, the Participant transfers or assigns or attempts to transfer or assign any rights herein or in the Site or the buildings or improvements thereon without the prior written approval of the Agency; or

(b) The Participant fails to commence or complete construction of the Project within the time set forth in the Schedule of Performance, Attachment No. 7, and any such failure shall not be cured within thirty (30) days after the date of receipt of written demand by the Agency; or

(c) Except as otherwise provided in this Agreement, there is any material change (voluntary or involuntary) in the management or control of the Participant contrary to the provisions of Section 107 hereof; or

(d) The Participant fails to submit to the City, or the City reasonably disapproves, final architectural, landscape, site and construction plans and related documents within the time set forth in the Schedule of Performance, Attachment No. 7, and any such failure shall not be cured or commenced to be cured within thirty (30) days after the date of receipt of written demand by the Agency and such cure is not diligently prosecuted to completion; or

(e) Any other default of the Participant with respect to its obligations under this Agreement which shall not be cured or commenced to be cured within thirty (30) days after the date of receipt of written demand by the Agency and such cure is not diligently prosecuted to completion.

V. [§500] GENERAL PROVISIONS

[§501] Conflicts of Interest.

No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

The Participant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

[§502] Non-liability of Agency Officials and Employees.

No member, official or employee of the Agency shall be personally liable to the Participant in the event of any default or breach by the Agency or for any amount which may become due to the Participant or on any obligations under the terms of this Agreement.

[§503] Enforced Delay Extension of Times of Performance.

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of

the public enemy; epidemics; quarantine restrictions, freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the Agency shall not excuse performance by the Agency) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the Agency and the Participant.

[§504] Notices and Communications.

Formal notices, demands, and communications between Agency and Participant shall be sufficiently given if personally delivered, delivered by a reputable same-day or overnight courier services that provides a receipt showing date and time of delivery, or delivered by United States mail, registered or certified, postage prepaid, return receipt requested, to the following addresses:

If to Agency: Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

With a copy to: Meyers Nave
555 12th Street
Suite 1500
Oakland, CA 94607
Attn: Agency Counsel

If to Participant: Shapell Industries, Inc.
100 North Milpitas Blvd.
Milpitas, CA 95035
Attn: Chris Truebridge, Division President

With a copy to: Law Offices of Bernard, Balgley, and Bonaccorsi
3900 NewPark Mall Road, Third Floor
Newark, CA 94560-5242
Attn: Steven M. Bernard

All notices shall be deemed to be received as of the earlier of actual receipt by the addressee thereof or the expiration of forty-eight (48) hours after depositing in the United States Postal System in the manner described in this Section. Such written notices, demands, and communications may be sent in the same manner to such other addresses as a party may from time to time designate by mail.

[§505] Ownership of Documents.

Deleted.

[§506] Modifications.

Any alternation, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

[§507] Binding Effect of Agreement.

This Agreement shall be binding upon and shall insure to the benefit of the party hereto, their legal representatives, successors, and assigns. This Agreement shall likewise be binding upon and obligate the Site and the successors in interest, owner or owners thereof, and all of the tenants, lessces, sublessees, and occupants of such Site.

[§508] Assurances to Act in Good Faith.

Agency and Participant agree to exccute all documents and instruments and to take all action and shall use their best efforts to accomplish the purposes of this Agreement. Agency and Participant shall each diligently and in good faith pursue the satisfaction of any conditions or contingences subject to their approval.

[§509] Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

[§510] Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

[§511] Entire Agreement.

This Agreement and all documents incorporated herein contain the entire understanding among the parties hereto relating to the transaction contemplated herein and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein and shall be of no further force or effect.

[§512] Waiver.

All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of Agency or Participant, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Participant. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

[§513] Agency Indemnity of City.

Agency shall indemnify, defend, and hold harmless City from and against any and all actions, suits, claims, damages liabilities, including legal costs and attorney's fees and expert witness fees, whether or not suit is actually filed, and any judgment rendered against City and/or its officers, employees, agent, representatives, and volunteers (hereinafter, collectively, "Claims") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with this Agreement.

[§514] Counterparts.

This Agreement may be executed in counterparts, each of which, when this Agreement shall have been signed by all the parties hereto, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

[§515] Authority.

Agency represents and warrants that: (i) it is a redevelopment agency duly organized and existing under the laws of the State of California; (ii) by proper action of Agency, Agency has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Agency does not violate any provision of any other agreement to which Agency is a party.

Participant represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Participant, Participant has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized principals or officers; and (iii) the entering into this Agreement by Participant does not violate any provision of any other agreement to which Participant is a party.

[§516] Attachments.

This Agreement includes all exhibits and attachments attached hereto, which by this reference are incorporated in this Agreement in their entirety. This Agreement also includes the

Redevelopment Plan and any other documents incorporated herein by reference, as though fully set forth herein.

**VI. [§600] TIME FOR EXECUTION OF AGREEMENT BY AGENCY;
RECORDATION**

This Agreement, when executed by the Participant must be authorized, executed and delivered to the Agency within thirty (30) days after the date of signature by the Participant or this Agreement shall be void, except to the extent that the Agency may consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The Effective Date of this Agreement shall be the date when this Agreement has been approved by the Agency Board and executed by the Agency.

_____, 2005 REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

By: _____
Chairman

By: _____
Secretary

SHAPELL INDUSTRIES OF NORTHERN CALIFORNIA, a
division of Shapell Industries, a Delaware corporation

By: _____

Title: _____

By: _____

Title: _____

“PARTICIPANT”

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF THE SITE.

Attachment 1

LEGAL DESCRIPTION
AGREEMENT PARCEL
PAGE 1 OF 2

REAL PROPERTY BEING A PORTION OF PARCEL 2 OF THAT CERTAIN PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY ON JULY 20, 1987 IN BOOK 576 OF MAPS AT PAGES 3,4,5, 6, AND 7, SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHEASTERLY CORNER OF SAID PARCEL 2, THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 2, SOUTH 09° 58' 20" WEST 219.32 FEET TO THE BEGINNING OF A NON-TANGENT CURVE HAVING A RADIUS OF 27.50 FEET AND BEING CONCAVE TO THE NORTH, THE CENTER OF WHICH BEARS NORTH 10° 50' 10" WEST THEREFROM;

THENCE DEPARTING SAID EASTERLY LINE AND ENTERING SAID PARCEL 2, ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 19.87 FEET, THROUGH A CENTRAL ANGLE OF 41° 24' 25";

THENCE NORTH 59° 25' 45" WEST 315.64 FEET TO THE BEGINNING OF A TANGENT CURVE HAVING A RADIUS OF 116.50 FEET AND BEING CONCAVE TO THE SOUTH;

THENCE WESTERLY ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 88.84 FEET, THROUGH A CENTRAL ANGLE OF 43° 41' 29";

THENCE SOUTH 76° 52' 46" WEST 125.13 FEET TO THE BEGINNING OF A TANGENT CURVE HAVING A RADIUS OF 27.50 FEET AND BEING CONCAVE TO THE NORTHEAST;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 43.20 FEET, THROUGH A CENTRAL ANGLE OF 90° 00' 00";

THENCE SOUTH 76° 52' 46" WEST 26.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE HAVING A RADIUS OF 27.50 FEET AND BEING CONCAVE TO THE NORTHWEST, THE CENTER OF WHICH BEARS SOUTH 76° 52' 46" WEST THEREFROM,

THENCE SOUTH AND WESTERLY ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 43.20 FEET, THROUGH A CENTRAL ANGLE OF 90° 00' 00";

THENCE SOUTH 76° 52' 46" WEST 273.28 FEET;

THENCE NORTH 13° 07' 14" WEST 11.69 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL 2 ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE HAVING A RADIUS OF 185.00 FEET AND BEING CONCAVE TO THE NORTHWEST, THE CENTER OF WHICH BEARS NORTH 33° 56' 46" WEST THEREFROM;

THENCE ALONG SAID WESTERLY LINE, NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 82.59 FEET, THROUGH A CENTRAL ANGLE OF 25° 34' 38";

THENCE CONTINUING ALONG SAID WESTERLY LINE, NORTH 30° 28' 36" EAST 410.15 FEET TO THE NORTHERLY LINE OF SAID PARCEL 2;

THENCE ALONG SAID NORTH LINE, SOUTH 75° 25' 45" EAST 267.36 FEET TO THE BEGINNING OF A TANGENT CURVE HAVING A RADIUS OF 415.00 FEET AND BEING CONCAVE SOUTHWESTERLY;

THENCE SOUTHEASTERLY CONTINUING ALONG SAID NORTHERLY LINE ALONG SAID CURVE, AN ARC DISTANCE OF 133.74 FEET, THROUGH A CENTRAL ANGLE OF 18° 27' 54";

THENCE CONTINUING ALONG SAID NORTHERLY LINE, SOUTH 56° 57' 51" EAST 285.57 FEET TO SAID POINT OF BEGINNING.

CONTAINING 4.81 ACRES MORE OR LESS

THIS DESCRIPTION IS SOLELY FOR IDENTIFYING A PARCEL OF LAND SUBJECT TO AN AGREEMENT. THIS DESCRIPTION IS NOT FOR SUBDIVIDING LAND.

EXHIBIT B PAGE 2 OF 2

TRACT 8792 - 680 M 25

NOTE: SEE SHEETS 3 THROUGH 6 FOR
EASEMENT COURSES NOT SHOWN HEREON.

PARCEL MAP MILPITAS TOWN CENTER SUBDIVISION

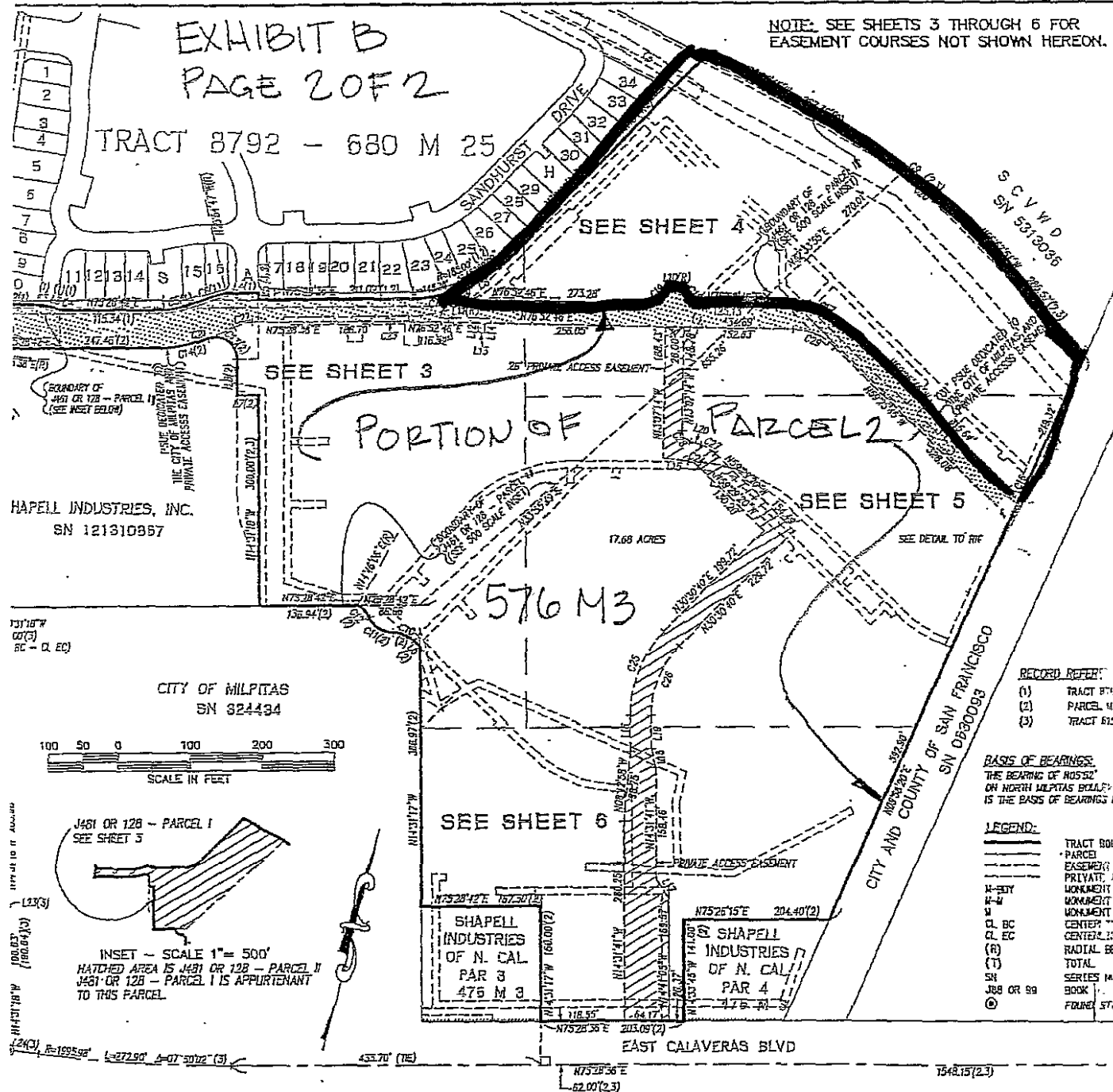
A SUBDIVISION OF PARCEL 2, AS SHOWN ON THE PARCEL MAP
RECORDED JULY 20, 1987 IN BOOK 576 OF MAPS AT PAGES
3 THROUGH 7, FILE NO. 9560439, SANTA CLARA COUNTY RECORDS,
AND AS AMENDED BY THE LOT LINE ADJUSTMENT RECORDED ON
JULY 29, 1996 AS SERIES NO. 13388144, SANTA CLARA COUNTY RECORDS.

MILPITAS
SANTA CLARA COUNTY, CALIFORNIA
APRIL, 2005



ALIQUOT
PLANNERS CIVIL ENGINEERS SURVEYORS

1390 SOUTH MAIN STREET, SUITE 310
WALNUT CREEK, CA. 94596
(925) 476-2300 FAX (925) 476-2350



CURVE	RADIUS	LEN	DELTA
C1	545.00	66.56	04° 02' 09"
C2	20.86	31.14	85° 32' 34"
C3	100.17	21.08	12° 03' 34"
C4	50.00	19.04	12° 07' 26"
C5(1)	771.50	6.11	11° 14' 07"
C6(1)	226.50	3.36	09° 50' 35"
C7	185.00	6.71	13° 25' 28"
C8	185.00	6.71	25° 34' 38"
C9	412.00	13.11	16° 27' 34"
C10	40.00	31.27	11° 47' 29"
C11(2)	37.50	41.20	13° 22' 52"
C12	40.00	23.94	11° 17' 45"
C13(2)	30.00	51.34	105° 31' 15"
C14(2)	224.00	76.32	15° 31' 15"
C15(2)	30.00	10.83	31° 52' 52"
C16	27.50	16.67	11° 24' 23"
C17	116.50	88.54	11° 41' 26"
C18	27.50	43.20	31° 00' 00"
C19	27.50	43.20	50° 00' 00"
C20	415.00	78.59	20° 51' 02"
C21	225.00	116.58	39° 46' 04"
C22	50.00	25.81	35° 45' 58"
C23	455.00	11.18	74° 24' 10"
C24	25.00	11.65	55° 42' 11"
C25	185.00	128.71	01° 02' 21"
C26	135.00	106.12	05° 02' 21"
C27	30.00	25.83	27° 47' 47"
C28	15.00	20.71	71° 09' 33"
C29	65.50	85.20	14° 41' 29"
C30	545.00	1.54	01° 16' 31"

RECORD REFERENCE

- (1) TRACT 8792 (680 M 25)
- (2) PARCEL MAP - MILPITAS TOWN CENTER (576 M 3)
- (3) TRACT 8154 (406 M 34)

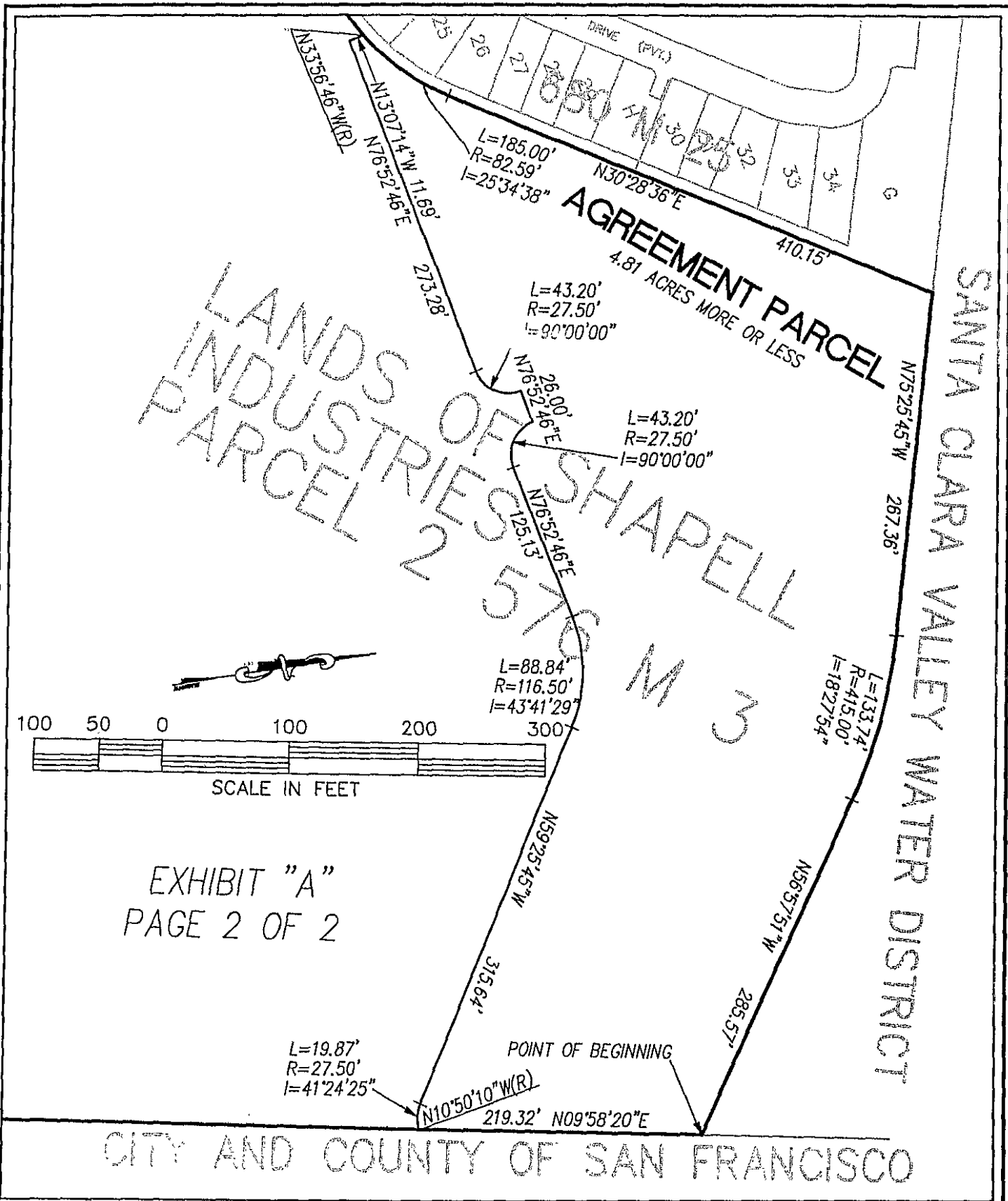
BASE OF BEARINGS

THE BEARING OF N0552° 24' 10" FOUND CITY MONUMENTS
ON NORTH MILPITAS BOULEVARD OVER TRACT 8792 (680 M 25)
IS THE BASIS OF BEARINGS FOR THIS MAP.

LEGEND

- TRACT BOUNDARY
- PARCEL
- EASEMENT
- PRIVATE EASEMENT LINE
- MONUMENT TO BOUNDARY
- MONUMENT TO MONUMENT
- MONUMENT
- CENTER OF CURVE
- CENTER OF CURVE
- RADIAL BEARING
- TOTAL
- SERIES NUMBER
- BOOK
- FOUNDER STAMPED CITY MONUMENT AS NOTED

LINE	BEARING	DIST
L1(1)	N055° 12' 13" E	20.57
L2(1)	N77° 32' 34" E	60.32
L3	N87° 35' 09" E	19.27
L4(1)	N75° 28' 35" E	45.12
L5	N14° 32' 24" E	5.00
L6	N59° 31' 23" E	12.47
L7(2)	N72° 28' 42" E	30.00
L8(2)	N14° 31' 16" E	52.60
L9	N15° 04' 14" E	11.69
L10(2)	N76° 02' 10" E	26.00
L11(2)	N33° 26' 13" E	13.00
L12	N13° 01' 17" E	13.00
L13	N76° 02' 10" E	10.00
L14	N13° 01' 17" E	13.00
L15	N82° 10' 50" E	35.35
L16	N14° 31' 23" E	11.66
L17	N44° 31' 23" E	32.63
L18	N27° 24' 12" E	27.94
L19	N14° 31' 23" E	47.34
L20	N87° 35' 09" E	16.09
L21(1)	N56° 13' 40" E	1.73
L22	N09° 30' 20" E	65.14
L23(3)	N75° 28' 42" E	4.69
L24(3)	N83° 16' 38" E	45.59
L25	N05° 52' 13" E	42.50
L26(2)	N84° 07' 47" E	35.00



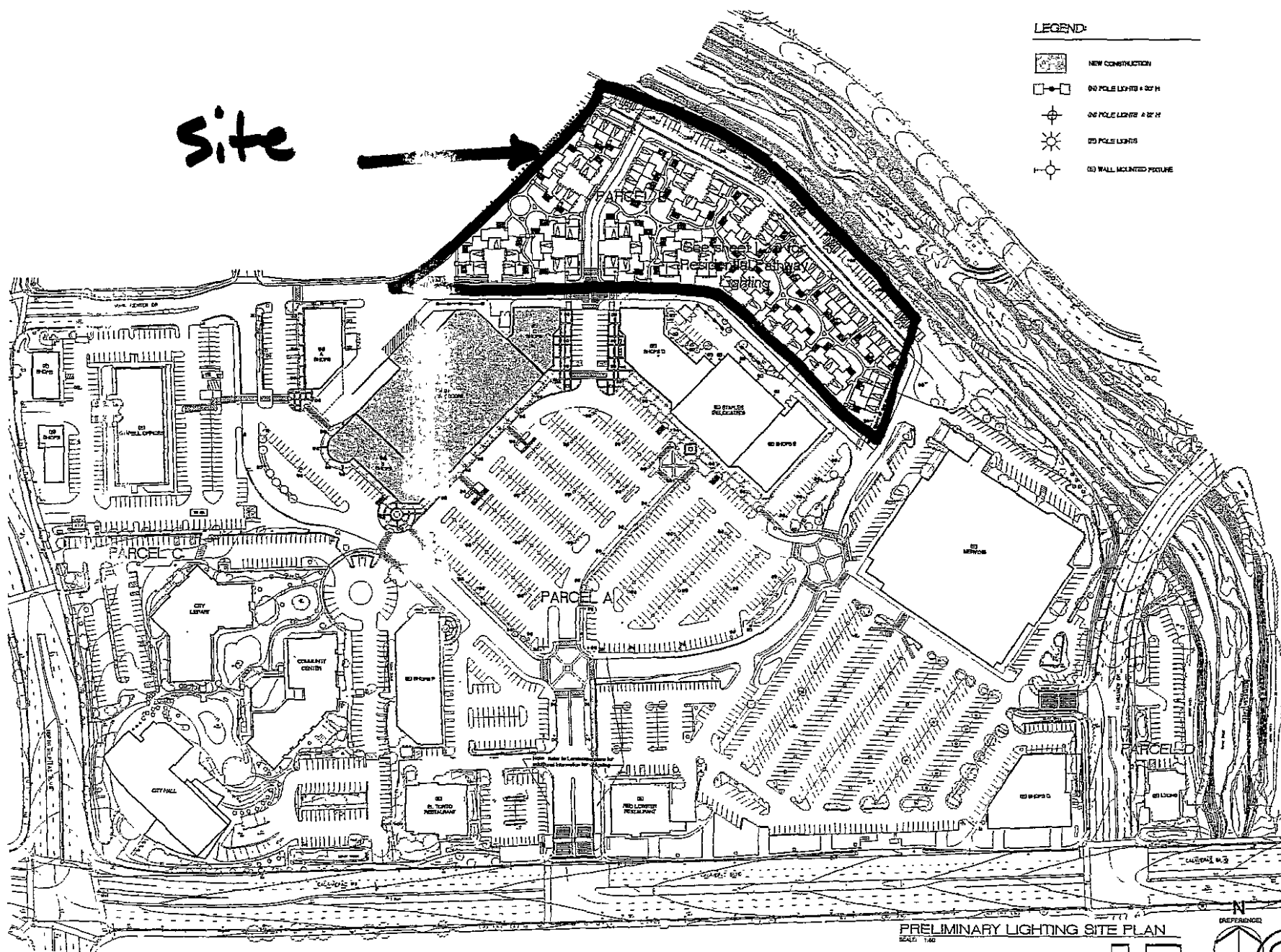
PLANNERS
CIVIL ENGINEERS
SURVEYORS


1390 SOUTH MAIN STREET
SUITE 310
WALNUT CREEK, CA. 94596
(925) 476-2300
FAX (925) 476-2350


Subject AGREEMENT PARCEL
Job No. 204056 Scale 1" = 100'
By GZ Date JUNE 2005 Chkd.
SHEET 2 OF 2


ATTACHMENT NO. 2


SITE MAP




 NEW CONSTRUCTION

 TWO POLE LIGHTS 4' 0" H.

 TWO POLE LIGHTS 4' 0" H.

 TWO POLE LIGHTS

 (3) WALL MOUNTED PICTURE



ARCHITECTS
300 WEST AVENUE, SUITE 214
DANVILLE, CALIFORNIA
9 4 5 2 6
TELEPHONE 926-620-7565
FACSIMILE 926-620-4866
CIRCLE 62 ON CARD

MILPITAS TOWN CENTER
MILPITAS, CALIFORNIA

SHAPELL INDUSTRIES
OF NORTHERN CALIFORNIA

SLP-
01/09/04

ATTACHMENT NO. 3

REGULATORY AGREEMENT

RECORDED REQUESTED BY
AND
WHEN RECORDED, RETURN TO:

Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)
(EXEMPT FROM RECORDING FEE PER GOV. CODE §6103)

**REGULATORY AGREEMENT AND DECLARATION
OF COVENANTS AND RESTRICTIONS
AFFECTING REAL PROPERTY**

by and between

THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and

**SHAPELL INDUSTRIES OF NORTHERN CALIFORNIA,
a division of SHAPELL INDUSTRIES, INC., a Delaware corporation**

THIS REGULATORY AGREEMENT (“Agreement”) is entered into effective as of _____, 2005 (“Effective Date”), by and between the Redevelopment Agency of the City of Milpitas (“Agency”), a public body existing and organized under California Health and Safety Code Section 33000 *et seq.* (“Community Redevelopment Law”) and Shapell Industries, Inc., a Delaware corporation (“Participant” or “Owner”).

RECITALS

A. Participant is the owner of certain real property, located within the City of Milpitas (“City”) and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “Property”).

B. The Property is located within the Milpitas Redevelopment Project Area.

C. Agency has agreed to provide financial assistance in the development of an affordable housing project in which the Property is located. Agency’s activities in this regard are designed to implement Agency’s effort to assist persons and families of Very Low, Low, and Moderate Income to purchase residential property and to increase, improve, and preserve the supply of Very Low, Low, and Moderate Income housing available in the City, in accordance with Community Redevelopment Law, Health and Safety Code Section 33000 *et seq.*

D. The City, the Agency and the Participant have executed an Owner Participation Agreement of even date herewith (“OPA”) that establishes the rights and obligations of the parties with respect to development of the Property. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the OPA.

E. The OPA provides for the construction on the Property of a sixty-five (65) town home unit development project, including sixteen (16) homes affordable to Moderate Income persons and households as set forth in this Agreement (the “Project”).

F. The Agency’s financial assistance and the use and affordability restrictions imposed by the Agency have enabled eligible Participant and eligible purchasers hereinafter defined to purchase the Property with financial assistance provided for in the OPA and at a price established in the OPA. In exchange for Agency’s assistance, Participant and any successor in interest agrees to the restrictions on the sale, resale, and occupancy of the property created by this Agreement.

NOW, THEREFORE, the Participant and Agency declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Property shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth.

1. DEFINITIONS.

1.1 Affordable Home. The term “Affordable Home” is defined in Section 2.1 hereof.

1.2 Area Median Income. The term “Area Median Income” means the area median income for Santa Clara County, California, adjusted for family size, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 or as published in Section 6932 of the Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

1.3 Eligible Purchaser. The term “Eligible Purchaser” shall mean a prospective purchaser of a Restricted Ownership Unit who has been pre-qualified by the Agency or its designee and who satisfies all of the following requirements:

(a) Gross Income for the prospective purchaser’s household for the full calendar year immediately preceding the date of purchase does not exceed 120% of the Area Median Income.

(b) The prospective purchaser intends to occupy the Restricted Ownership Unit as his or her principal residence.

(c) The prospective purchaser does not own any other residential real property at the time of the purchase.

(d) The prospective purchaser meets all other applicable eligibility requirements of the Agency in effect at the time of the purchase.

1.4 Gross Income. The term “Gross Income” shall have the meaning ascribed to such term in Section 6914 of the Regulations.

1.5 Moderate-Income. The term “Moderate-Income” means 120% of the Area Median Income.

1.6 Regulations. The term “Regulations” means Title 25 of the California Code of Regulations.

2. DEVELOPMENT AND MARKETING OF AFFORDABLE HOMES.

2.1 Development of Affordable Homes. Participant shall develop sixteen (16) residential units on the Property that will be made available to Moderate-Income households (“Affordable Homes”), pursuant to the terms of this Regulatory Agreement and the OPA .

2.2 Calculation of Sales Price. The maximum sales price of an Affordable Home shall be determined as illustrated in Exhibit B hereto with the assumption that there will be 1.5 occupants per bedroom and with the understanding that the interest rate for the purpose of determining the amount of a mortgage to support a promissory note for the purchase of an Affordable Home shall be the interest rate at the time Eligible Purchaser applies for a loan to purchase the Affordable Home.

2.3. Qualification of Eligible Purchasers. The Agency will provide assistance to Participant to qualify purchasers for purchase of the Affordable Homes. Certification of household size and income shall be administrated by either the Agency, or by the Housing Authority of Santa

Clara County, or some other entity as designated by the Agency pursuant to an agreement with the Agency.

2.4. Marketing. Participant agrees to use its best efforts to market the Affordable Homes to the same extent and in the manner as those being developed on the Property that are not designated as Affordable Homes.

2.5. Imposition of Resale Restrictions. The Participant shall ensure that each initial conveyance of an Affordable Home is subject to a Resale Restriction and Option to Purchase Agreement in substantially the form attached hereto as Exhibit C ("the Resale Agreement"). The Resale Agreement shall be recorded against each Affordable Home sold to a purchaser upon close of escrow for the sale of an Affordable Home. Following recordation of the Resale Agreement as required hereunder, the Agency shall have the right to enforce the Resale Agreement and, upon default under any of the terms of the Resale Agreement, the Agency may take any one or more of the following steps, in addition to all other remedies provided by the law or in equity:

a. Enforce the obligations under the Resale Agreement by mandamus or other suit, action, or proceeding at law or in equity; including injunctive relief, require the Owner, or any successor in interest, to perform its obligations and covenants under this Agreement or under the Resale Agreement; or, enjoin any act or thing that may be unlawful or in violation of the provision of this Agreement, the OPA, or the Resale Agreement;

b. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations under the OPA and the Resale Agreement against the Owner.

3. AGENCY FINANCING. Agency agrees to provide financing to assist Eligible Purchasers to purchase the Restricted Ownership Units pursuant to the following terms and conditions and such other provisions pertaining to the provision of such assistance as the Agency may adopt from time to time.

3.1 Agency Assistance. Upon the issuance of a City Approval of Final Inspection, of each Restricted Ownership Unit, the Agency shall make available to an Eligible Purchaser a deferred payment second mortgage ("Agency's Loan") in an amount of not to exceed fifty thousand dollars (\$50,000.00). The Agency may make additional funds available pursuant to section 204(b) of the OPA.

3.2 Agency Loan Documents. Each Eligible Purchaser receiving an Agency Loan shall be required to execute a promissory note (in substantially the form attached hereto as Exhibit D) ("Agency Promissory Note"), payable to the Agency in the amount of the Agency's Loan, and a Deed of Trust (in substantially the form attached hereto as Exhibit E) that shall provide the Agency with a security interest in the financed Restricted Ownership Unit.

3.3 Eligible Purchasers. The initial sale of each of the Restricted Ownership Units shall be limited to persons who qualify as Eligible Purchasers and shall be financed pursuant to the terms and conditions described above. Agency or its designee shall screen prospective purchasers to determine their eligibility.

4. ENFORCEMENT.

4.1 Events of Default. In the event Participant defaults in the performance or observance of any covenant, agreement or obligation of Participant set forth in this Regulatory Agreement, and if such default remains uncured for a period of (30) days after written notice thereof shall have been given by Agency, or, in the event said default cannot be cured within said time period, Participant has failed to commence to cure such default within said thirty (30) days and diligently prosecuted said cure to completion, then Agency shall declare an "Event of Default" to have occurred hereunder, and, at its option, may take one or more of the following steps:

(a) By mandamus or other suit, action or proceeding at law or in equity, require Participant to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of this Regulatory Agreement; or

(b) Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Participant hereunder.

Failure or delay in giving notice shall not constitute a waiver of default, nor shall it change the time of default.

5. COVENANTS TO RUN WITH THE LAND. Participant hereby subjects the Property to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Agency and the Participant hereby declare their express intent that all such covenants, reservations and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Participant's successors in title to the Property; provided, however, that upon the termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire, except as otherwise expressly provided. All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency, and such covenants shall run in favor of the Agency for the entire term of this Regulatory Agreement. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

6. NONDISCRIMINATION.

6.1 Nondiscrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Project, or any part thereof, nor shall Participant, or any person claiming under or through Participant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property, or any part thereof.

6.2 Anti-Discrimination Clauses in Agreements. Participant agrees for itself and any successor in interest that Participant shall refrain from restricting the rental, sale, or lease of any portion of the Property or the Project, or contracts relating to the Property or the Project, on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

6.2.1 In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee himself, or any persons claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land.

6.2.2 In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of status, race, color, creed, religion, sex, marital status, ancestry, physical or mental handicap, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased, nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

6.2.3 In contracts: "There shall be no discrimination against or segregation of any persons or group of persons on account of status, race, color, creed, religion, sex, marital status, ancestry, physical or mental handicap, or national origin in the sale, lease, transfer, use, occupancy, tenure, or enjoyment of land, nor shall the transferee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of land."

7. TERM; TERMINATION.

The term of this Agreement shall commence upon the Effective Date, and shall continue until forty-five (45) years following issuance of the last Certificate of Occupancy for the Project; provided however, if Participant's entitlements to develop the Project expire prior to construction of the Project and the Project is not developed pursuant to the OPA, this Regulatory Agreement shall be of no further force and effect, and the Parties shall record a termination agreement so stating in the official records of the County of Santa Clara.

8. MISCELLANEOUS.

8.1 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(i) personal delivery, in which case notice shall be deemed delivered upon receipt;

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered (i) business days after deposit, postage prepaid in the United States mail;

(iii) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or

(iv) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Agency: Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

With a copy to: Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Attn: Milpitas Redevelopment Agency Counsel
Facsimile: (510) 351-4481

Participant: Shapell Industries, Inc.
100 North Milpitas Blvd.
Milpitas, CA 95035
Attn: President/Division Manager

With a copy to: Law Offices of Bernard, Balgley, and Bonaccorsi
3900 NewPark Mall Road, Third Floor
Newark, CA 94560-5242
Attn: Steven M. Bernard

8.2 Attorneys' Fees. In the event that a party to this Agreement brings an action against the other party hereto by reason of the breach of any condition or covenant, representation or warranty contained herein, or otherwise arising out of this Agreement, the

prevailing party in such action shall be entitled to recover from the other reasonable attorneys' fees to be fixed by the court which shall render a judgment, as well as the costs of the suits. Attorneys' fees shall include attorney's fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

8.3 Amendments. This Agreement may be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Santa Clara.

8.4 Severability/Waiver/Integration.

(a) If any provision of this Agreement shall be held to be invalid, void or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

(b) A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenant or condition, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

(c) Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties hereunder are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default.

(d) Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity, which are not otherwise provided for in this Agreement, expressly including the remedy of specific performance of this Agreement.

(e) No Damages. In no event shall damages be awarded against City, Agency or Participant upon an event of default or upon termination of this Agreement.

(f) This Agreement contains the entire Agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations, documents and discussions pertaining thereto.

8.5 Binding Effect; Due Authorization. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law. Participant hereby represents and warrants that all actions necessary on the part of Participant to authorize the execution of this Agreement and to undertake the actions contemplated hereby have been

undertaken, and the person(s) executing this Agreement on behalf of Participant have been duly authorized to do so.

8.6 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish any of the parties as partners, co-venturers, or principal and agent with one another.

8.7 Captions; Interpretation. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

8.8 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

8.9 Further Assurances. The parties agree to execute such instruments and to undertake such actions, including without limitation the recordation of this document, as may be necessary to effectuate the intent of this Agreement.

8.10 Governing Law; Time is of the Essence. This Agreement shall be interpreted under and pursuant to the laws of the State of California. In all matters under this Agreement, the Parties agree that time is of the essence.

9. **FUTURE ENFORCEMENT BY CITY.** The parties hereby agree that should the Agency cease to exist as an entity at any time during the term of this Agreement, the City of Milpitas shall have the right to enforce all of the terms and conditions herein, unless the Agency has previously specified another entity to enforce this Agreement.

IN WITNESS WHEREOF, the Agency and Participant have executed this Agreement as of the date first written above.

[EXECUTION PAGE FOLLOWS]

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS
a public body corporate and politic

By: _____
Executive Director

APPROVED AS TO FORM:

By: _____
Agency Counsel

ATTEST:

By: _____
Agency Secretary

SHAPELL INDUSTRIES, INC.
a Delaware corporation

By: _____

Its: _____

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

)
) ss.
)

On _____ before me, _____,
personally appeared _____,
personally known to me (or proved to me that on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

EXHIBIT A

Legal Description of the Site

EXHIBIT "A"
LEGAL DESCRIPTION
AGREEMENT PARCEL
PAGE 1 OF 2

REAL PROPERTY BEING A PORTION OF PARCEL 2 OF THAT CERTAIN PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY ON JULY 20, 1987 IN BOOK 576 OF MAPS AT PAGES 3,4,5, 6, AND 7, SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHEASTERLY CORNER OF SAID PARCEL 2, THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 2, SOUTH 09° 58' 20" WEST 219.32 FEET TO THE BEGINNING OF A NON-TANGENT CURVE HAVING A RADIUS OF 27.50 FEET AND BEING CONCAVE TO THE NORTH, THE CENTER OF WHICH BEARS NORTH 10° 50' 10" WEST THEREFROM;

THENCE DEPARTING SAID EASTERLY LINE AND ENTERING SAID PARCEL 2, ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 19.87 FEET, THROUGH A CENTRAL ANGLE OF 41° 24' 25";

THENCE NORTH 59° 25' 41" WEST 105.64 FEET TO THE BEGINNING OF A TANGENT CURVE HAVING A RADIUS OF 116.50 FEET AND BEING CONCAVE TO THE SOUTH;

THENCE WESTERLY ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 88.84 FEET, THROUGH A CENTRAL ANGLE OF 43° 41' 29";

THENCE SOUTH 76° 52' 46" WEST 125.13 FEET TO THE BEGINNING OF A TANGENT CURVE HAVING A RADIUS OF 27.50 FEET AND BEING CONCAVE TO THE NORTHEAST;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 43.20 FEET, THROUGH A CENTRAL ANGLE OF 90° 00' 00";

THENCE SOUTH 76° 52' 46" WEST 26.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE HAVING A RADIUS OF 27.50 FEET AND BEING CONCAVE TO THE NORTHWEST, THE CENTER OF WHICH BEARS SOUTH 76° 52' 46" WEST THEREFROM;

THENCE SOUTH AND WESTERLY ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 43.20 FEET, THROUGH A CENTRAL ANGLE OF 90° 00' 00";

THENCE SOUTH 76° 52' 46" WEST 273.28 FEET;

THENCE NORTH 13° 07' 14" WEST 11.69 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL 2 ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE HAVING A RADIUS OF 185.00 FEET AND BEING CONCAVE TO THE NORTHWEST, THE CENTER OF WHICH BEARS NORTH 33° 58' 46" WEST THEREFROM;

THENCE ALONG SAID WESTERLY LINE, NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 82.59 FEET, THROUGH A CENTRAL ANGLE OF 25° 34' 38";

THENCE CONTINUING ALONG SAID WESTERLY LINE, NORTH 30° 28' 36" EAST 410.15 FEET TO THE NORTHERLY LINE OF SAID PARCEL 2;

THENCE ALONG SAID NORTH LINE, SOUTH 75° 25' 45" EAST 267.36 FEET TO THE BEGINNING OF A TANGENT CURVE HAVING A RADIUS OF 415.00 FEET AND BEING CONCAVE SOUTHWESTERLY;

THENCE SOUTHEASTERLY CONTINUING ALONG SAID NORTHERLY LINE ALONG SAID CURVE, AN ARC DISTANCE OF 133.74 FEET, THROUGH A CENTRAL ANGLE OF 18° 27' 54";

THENCE CONTINUING ALONG SAID NORTHERLY LINE, SOUTH 56° 57' 51" EAST 285.57 FEET TO SAID POINT OF BEGINNING.

CONTAINING 4.81 ACRES MORE OR LESS

THIS DESCRIPTION IS SOLELY FOR IDENTIFYING A PARCEL OF LAND SUBJECT TO AN AGREEMENT. THIS DESCRIPTION IS NOT FOR SUBDIVIDING LAND.

EXHIBIT B
PAGE 2 OF 2

TRACT 8792 - 680 M 25

NOTE: SEE SHEETS 3 THROUGH 6 FOR
EASEMENT COURSES NOT SHOWN HEREON.

PARCEL MAP MILPITAS TOWN CENTER SUBDIVISION

A SUBDIVISION OF PARCEL 2, AS SHOWN ON THE PARCEL MAP
RECORDED JULY 20, 1987 IN BOOK 576 OF MAPS AT PAGES
3 THROUGH 7, FILE NO. 9560439, SANTA CLARA COUNTY RECORDS,
AND AS AMENDED BY THE LOT LINE ADJUSTMENT RECORDED ON
JULY 29, 1995 AS SERIES NO. 13388144, SANTA CLARA COUNTY RECORDS.

MILPITAS
SANTA CLARA COUNTY, CALIFORNIA
APRIL 2005



ALIQUOT

PLANNERS CIVIL ENGINEERS SURVEYORS

1380 SOUTH MAIN STREET, SUITE 310
WALNUT CREEK, CA 94586
(925) 476-2300 FAX (925) 476-2330

CURVE	RADIUS	LENGTH	DELTA
C1	845.00'	68.56'	84° 02' 08"
C2	20.86'	51.14'	85° 32' 34"
C3	160.17'	21.28'	12° 03' 34"
C4	80.00'	18.04'	12° 07' 28"
C5(1)	171.50'	63.55'	21° 14' 07"
C6(1)	226.30'	39.26'	06° 50' 38"
C7	185.00'	62.71'	10° 25' 22"
C8	185.00'	62.59'	25° 34' 36"
C9	415.00'	133.74'	16° 27' 54"
C10	40.00'	31.27'	41° 17' 29"
C11(2)	27.50'	41.48'	63° 22' 52"
C12	40.00'	23.84'	11° 17' 45"
C13(2)	30.00'	57.34'	109° 31' 15"
C14(2)	224.00'	76.32'	18° 31' 15"
C15(2)	30.00'	10.63'	37° 52' 52"
C16	27.50'	18.27'	41° 17' 25"
C17	116.50'	65.64'	13° 14' 26"
C18	27.50'	43.20'	93° 00' 00"
C19	27.50'	43.20'	80° 00' 00"
C20	415.00'	78.52'	70° 51' 02"
C21	224.00'	116.56'	29° 46' 04"
C22	50.00'	25.95'	23° 13' 58"
C23	455.00'	111.87'	01° 33' 10"
C24	95.00'	16.57'	37° 52' 42"
C25	165.00'	128.16'	33° 02' 21"
C26	135.00'	106.13'	45° 02' 21"
C27	52.00'	25.23'	27° 47' 47"
C28	16.00'	20.71'	74° 05' 35"
C29	85.50'	35.20'	43° 41' 25"
C30	545.00'	1.34'	00° 16' 31"

SCALE 1" = 10'

- RECORD REFERENCE:
- (1) TRACT 8792 (680 M 25)
 - (2) PARCEL MAP - MILPITAS TOWN CENTER (576 M 3)
 - (3) TRACT 6154 (406 M 34)

BASIS OF BEARINGS:
THE BEARING OF NOS 52(13) FOUND CITY MONUMENTS
ON NORTH MILPITAS BOULEVARD, SEE TRACT 8792 (680 M 25)
IS THE BASIS OF BEARINGS FOR THIS MAP.

LEGEND:

- TRACT BOUNDARY
- PARCEL LINE
- EASEMENT LINE
- PRIVATE
- RENT LINE
- MONUMENT TO SPANCARY
- MONUMENT TO MONUMENT
- MONUMENT
- CL BC
- CL EC
- (R)
- (T)
- TOTAL
- SERIES NUMBER
- BOOK USE
- FOUND STAMPA CITY MONUMENT AS NOTED

LINE	BEARING	DIST
L1(1)	N05° 52' 13" E	60.57'
L2(1)	N79° 32' 37" E	20.32'
L3	N87° 36' 05" E	19.27'
L4(1)	N75° 25' 35" E	45.12'
L5	N14° 31' 22" W	9.00'
L6	N90° 31' 25" W	22.47'
L7(2)	N75° 28' 46" E	32.00'
L8(2)	N14° 31' 16" W	32.60'
L9	N15° 07' 17" E	11.69'
L10(R)	N75° 32' 36" E	36.00'
L11(R)	N87° 36' 05" E	19.27'
L12	N15° 07' 15" E	13.00'
L13	N75° 32' 36" E	10.00'
L14	N15° 07' 14" E	13.00'
L15	N82° 34' 53" E	35.38'
L16	N14° 31' 22" W	31.66'
L17	N45° 55' 37" E	30.63'
L18	N27° 21' 37" E	27.84'
L19	N14° 31' 17" W	27.34'
L20	N87° 17' 07" E	26.08'
L21(R)	N85° 13' 40" W	1.73'
L22	N85° 55' 20" E	56.14'
L23(3)	N75° 28' 42" E	7.68'
L24(3)	N85° 16' 36" E	45.59'
L25	N05° 52' 13" E	42.50'
L26(R)	N87° 47' E	35.00'

PORTION OF PARCEL 2

576 M 3

SEE SHEET 6

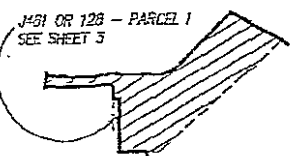
SHAPPELL INDUSTRIES OF N. CAL PAR 3 475 M 3

SHAPPELL INDUSTRIES OF N. CAL PAR 4 475 M 3

EAST CALAVERAS BLVD

CITY AND COUNTY OF SAN FRANCISCO
SN 0630093

CITY OF MILPITAS
SN 324434



INSET - SCALE 1" = 500'
HATCHED AREA IS J481 OR 128 - PARCEL 1
J481 OR 128 - PARCEL 1 IS APPURTENANT TO THIS PARCEL

HAPPELL INDUSTRIES, INC.
SN 121310957

131°18'W
60(3)
BC - CL EC

131°18'W
60(3)
BC - CL EC

LANDS OF INDUSTRIES OF SHAPPELL
PARCEL 2510M3

AGREEMENT PARCEL
4.81 ACRES MORE OR LESS

SANTA CLARA VALLEY WATER DISTRICT

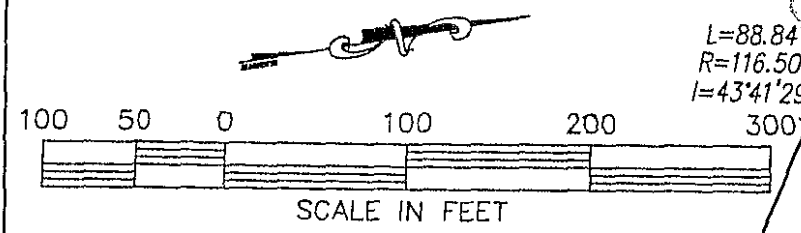
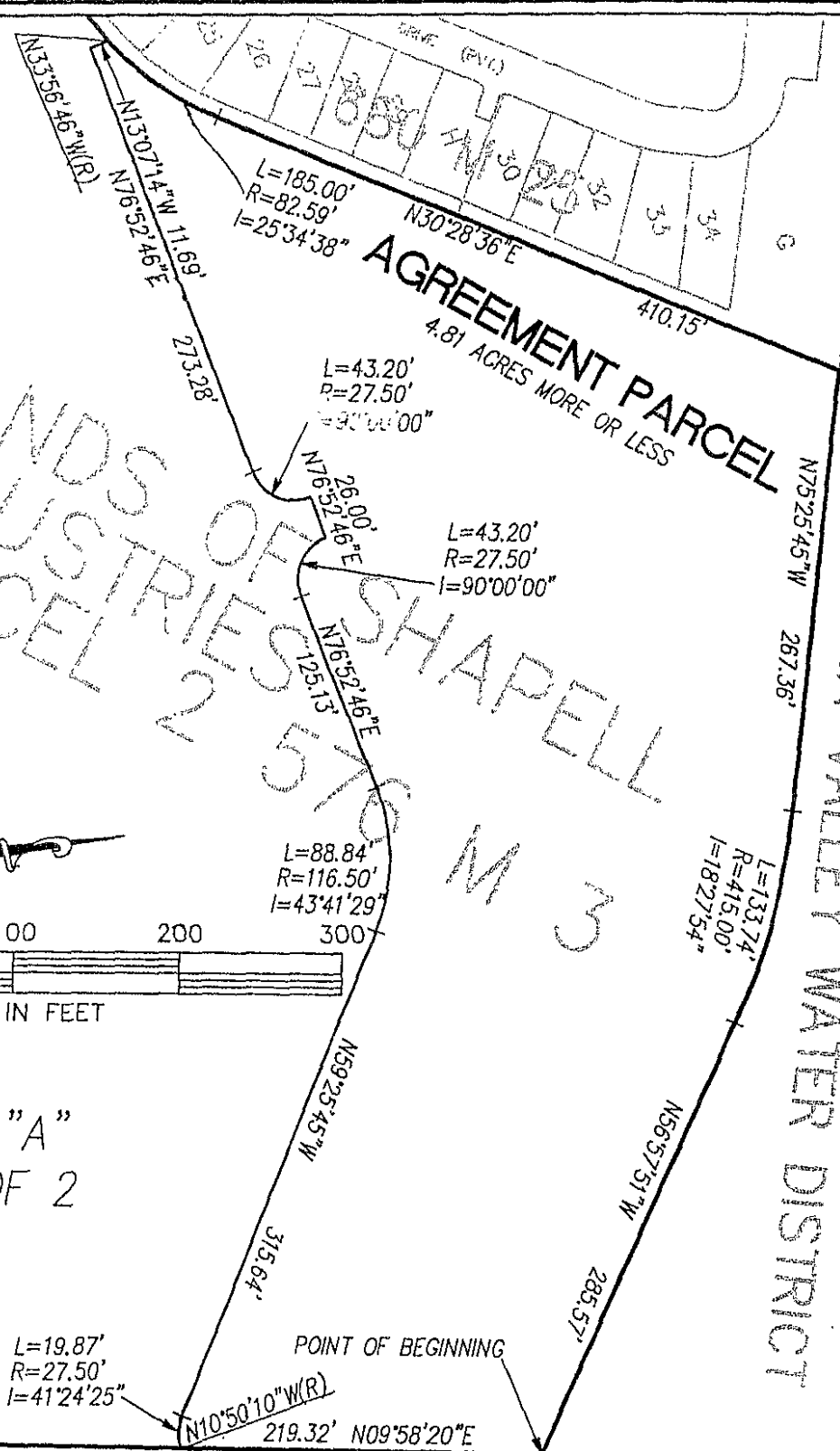


EXHIBIT "A"
PAGE 2 OF 2



CITY AND COUNTY OF SAN FRANCISCO



PLANNERS
CIVIL ENGINEERS
SURVEYORS
1390 SOUTH MAIN STREET
SUITE 310
WALNUT CREEK, CA. 94596
(925) 476-2300
FAX (925) 476-2350

Subject AGREEMENT PARCEL
Job No. 204056 Scale 1" = 100'
By GZ Date JUNE 2005 Chkd.
SHEET 2 OF 2

EXHIBIT B

Example of Affordable Home Sales Price Calculation

EXHIBIT C

Resale Restriction and Option to Purchase Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

MILPITAS REDEVELOPMENT AGENCY
455 East Calaveras Boulevard
Milpitas, CA 95035

To be recorded without fee.
(Gov. Code, §§ 6103 and 27383.)

(Space Above This Line For Recorder's Use Only)

**RESALE RESTRICTION AGREEMENT
AND OPTION TO PURCHASE**

Owner: _____

Property Address: 100 North Milpitas Blvd.,
Milpitas, California 95035

Name of Development: Town Center

This RESALE RESTRICTION AND OPTION TO PURCHASE AGREEMENT ("Agreement") is entered into by and between the Redevelopment Agency of the City of Milpitas ("the Agency") and _____ [purchaser of unit] ("Owner") regarding certain improved real property, which is more particularly described in Exhibit A attached hereto and incorporated herein and commonly known as Town Center, Milpitas, CA 95035 (the "Property") effective as of _____, 2005 ("Effective Date"). Agency and Owner are hereinafter collectively referred to as the "Parties."

RECITALS

A. The Agency pursuant to the Community Redevelopment Law (Health & Safety Code section 33000 et seq.) and the Agency's Redevelopment Plan maintains an affordable housing fund, which it uses for the purpose encouraging the construction of housing within the Redevelopment Plan Area that is affordable to persons of moderate income ("the Program").

B. Pursuant to the Program, the Agency and Shapell Industries of Northern California ("Shapell") entered into an Owner Participation Agreement, dated _____, 2005 (collectively "the Agreement") under which Shapell has agreed to construct and sell 16 homes at prices that are affordable to persons of very low and moderate incomes and in exchange the Agency has agreed to provided certain financial incentives.

C. Owner is the owner of certain real property located within the City of Milpitas, legally described in Exhibit A and commonly known as ____ [address of unit] _____, Milpitas, CA 95035 ("the Property"). The Property is one of the affordable homes constructed by Shapell pursuant to the Agreement.

D. Owner is an eligible Moderate-Income purchaser under the Program, intends to live in the Property as an owner occupant, and agrees to maintain the Property as Owner's principal residence.

E. In order to maintain and preserve the Property as housing affordable to eligible Moderate-Income purchasers, it is necessary to restrict the use and resale of the Property through imposition of the occupancy and resale restrictions set forth in this Agreement. These restrictions are intended to prevent initial and subsequent purchasers from using the Property for purposes incompatible with the Program and realizing unwarranted gains from sales of the Property at unrestricted prices. The terms and conditions of this Agreement are intended to provide the necessary occupancy and resale restrictions to ensure that the Property is used, maintained, and preserved as housing affordable to eligible Moderate-Income purchasers. To further serve the purposes of the Program, it is necessary that the Agency be granted an option to purchase the property so that the property may be resold by the Agency to an eligible household.

F. Accordingly, the Parties desire to enter into this Resale Restriction and Option to Purchase Agreement, which provides, generally, that Owner may only sell the property to Eligible Households (i.e. households meeting the household income limitations set forth herein) at a price not to exceed the price equal to the initial purchase price adjusted to reflect increases in median household income since the Property was initially purchased by Owner. Alternatively, the Agreement provides that the City may exercise its option to purchase the Property at the same price.

G. The Property constitutes a valuable community resource by providing decent, safe, and sanitary housing to persons and families of moderate income who otherwise would be unable to afford such housing. To protect and preserve this resource it is necessary, proper, and in the public interest for the Agency to administer occupancy and resale controls consistent with the Program by means of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the Program, Owner and Agency hereby agree as follows:

1. Definitions.

a. "Affordable Unit Cost" shall mean a sales price that results in annual housing costs, including principal payments, interest, property taxes, homeowners' insurance, homeowners' association dues, and mortgage insurance, that do not exceed 30% of income level for the Eligible Household.

b. "Area Moderate Income for Santa Clara County" means those income and eligibility levels determined, updated, and published each year by the California Department of Housing and Community Development, based on Santa Clara County median income levels, adjusted for household size.

c. "Persons and families of [very low, low, or moderate] income" means persons and families whose income do not exceed [fifty percent (50%); eighty percent (80%); or one hundred twenty percent (120%)] of the Area Median Income for Santa Clara County, as adjusted for household size.

d. Persons and families meeting the definition set forth in Paragraph 1(b) above shall be referred to as "Eligible Households."

2. Program Requirements.

a. **Affordability Restrictions.** Owner hereby covenants and agrees that during the term of this Agreement all of the requirements and restrictions of this Agreement shall apply, and the Property shall be sold or otherwise transferred only pursuant to the terms and conditions of this Agreement and only to (i) Eligible Households at a price not to exceed the Adjusted Resale Price, as defined in Paragraph 5, (ii) the Agency pursuant to Paragraph 3, or (iii) a permitted transferee pursuant to Paragraph 9.

b. **Disclosure.** DURING THE TERM OF THIS AGREEMENT THERE SHALL BE NO SALE OR OTHER TRANSFER OF THE PROPERTY WITHOUT THE WRITTEN CERTIFICATION BY THE AGENCY THAT THE TRANSFeree QUALIFIES AS AN ELIGIBLE HOUSEHOLD AND THAT THE PROPERTY IS BEING TRANSFERRED AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE, WHICH IS CAPPED AT THE AFFORDABLE UNIT COST AS DEFINED IN PARAGRAPH 1.a. ANY SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS COVENANT SHALL BE VOID.

c. **Principal Residence Requirement.** OWNER COVENANTS AND AGREES THAT HE/SHE/THEY SHALL OCCUPY THE PROPERTY AS HIS/HER/THEIR PRINCIPAL RESIDENCE FOR THE DURATION OF HIS/HER/THEIR OWNERSHIP AND SHALL NOT RENT OR LEASE THE PROPERTY OR PORTION THEREOF DURING THE TERM OF THIS AGREEMENT. Without limiting the generality of the foregoing, any absence from the Property by Owner for a period of ninety (90) or more consecutive days shall be deemed an abandonment of the Property as the principal residence of Owner in violation of the conditions of this Paragraph. Upon request by the Agency made from time to time, the Owner of the Property shall submit an affidavit to the Agency certifying that the Property is the Owner's principal residence and provide such documents and other evidence as may be requested to verify Owner's compliance with this requirement. Abandonment of the Property shall constitute an Option Event (as defined in Paragraph 3.c below) and shall entitle the Agency to exercise its Option to purchase the Property.

3. Option to Purchase.

a. **Grant of Option to Purchase.** Owner hereby grants to the Agency an option ("Option") to purchase all of Owner's right, title and interest in and to the Property upon the occurrence of an Option Event (defined in Paragraph 3.c below), subject to the terms and conditions contained herein.

b. **Assignment of the Option.** The Agency may assign the Option to another government entity, a non-profit affordable housing provider or a person or family that qualifies as an Eligible Household. The Agency's assignment of the Option shall not extend any time limits contained herein with respect to the exercise period of the Option or the period within which the Property must be purchased.

c. **Events Causing Rise to Right to Exercise Option** The Agency shall have the right to exercise its Option upon the occurrence or any of the following events (each, an "Option Event"):

i. Receipt of a Notice of Intent to Transfer (defined in Paragraph 3.d.i below);

ii. Any actual, attempted or pending sale, conveyance, transfer, lease or other attempted disposition of the Property or of any estate or interest therein, except as provided in Paragraph 10 below;

iii. Any actual, attempted or pending encumbrance of the Property, including without limitation by way of mortgage or deed of trust, or by judgment, mechanics, tax or other lien, except as provided in Paragraph 9 below;

iv. Recordation of a notice of default and/or notice of sale pursuant to California Civil Code section 2924 (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;

v. Commencement of a judicial foreclosure proceeding regarding the Property;

vi. Execution by Owner of any deed in lieu of foreclosure transferring ownership of the Property;

vii. Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, concerning the Owner; or

viii. Any violation by Owner of any provision of this Agreement including, without limitation, the conditions set forth in Paragraph 2 above.

d. **Method of Exercising the Option.**

i. **Notice of Intent to Transfer.** If Owner desires to sell, convey, transfer (other than pursuant to Paragraph 9), lease, encumber (other than pursuant to Paragraph

10) or otherwise dispose of the Property or of any estate or interest therein, no less than 60 days prior to the date of such proposed sale, conveyance, transfer, lease, encumbrance or disposition, Owner shall notify Agency in writing to that effect (the "Notice of Intent to Transfer"). The Notice of Intent to Transfer shall be in substantially the form attached hereto as Exhibit B. In the case of a proposed sale of the Property to an identified prospective purchaser, the Owner shall submit to the Agency, together with the Notice of Intent to Transfer, a copy of the prospective purchaser's income certification, a list of all assets owned by the prospective purchaser, and other financial information reasonably requested by Agency, in a form approved by the Agency, along with the income certification to be provided to any lender making a loan to the prospective purchaser. The Agency may require documentation evidencing and supporting the income and other financial information contained in the certifications.

ii. **Notice of Exercise.** Upon the occurrence of any Option Event, the Agency may exercise its Option by delivering notice, pursuant to Paragraph 16 and within the time period specified in Paragraph 3(d)(iv), to Owner of Agency's intent to exercise such Option pursuant to the terms of this Agreement ("Notice of Exercise"). The Notice of Exercise may be in the form attached hereto and incorporated herein as Exhibit C, or in such other form as the Agency may from time to time adopt. If the Option Event relates to the potential foreclosure of a mortgage under Paragraphs 3.c.iv, 3.c.v, or 3.c.vi, then the Agency shall also deliver the Notice of Exercise to the mortgagee or beneficiary under such mortgage, at such mortgagee's or beneficiary's address of record in the Office of the Recorder of Santa Clara County.

iii. **Notice of Consent to Transfer.** If the Agency does not exercise the Option, it may give its consent to the occurrence of the Option Event ("Consent to Transfer"). If the Option Event involves a proposed sale of the Property to a prospective purchaser, the Agency's consent shall be conditioned upon (i) the proposed purchaser's qualification as an Eligible Household; (ii) the sale of the Property at a price not to exceed the Adjusted Resale Price; (iii) the proposed purchaser's execution of a Disclosure Statement in the form attached hereto as Exhibit F or such other form or forms as may be promulgated by the Agency; and (iv) the proposed purchaser's assumption of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form acceptable to Agency, or execution of an agreement substantially similar to this Agreement, within sixty (60) days after the Consent to Transfer has been delivered to Owner and recordation of such assumption agreement or substitute agreement. If the prospective purchaser (i) fails to qualify as an Eligible Household, (ii) fails to execute and deliver the Disclosure Statement to the Agency, or (iii) fails to execute and deliver to the Agency an assumption agreement or an agreement substantially similar to this Agreement within such sixty (60) day period, then the Consent to Transfer shall expire and the Agency may, at its option, either notify Owner of the disqualification, thereby entitling Owner to locate another purchaser who qualifies as Eligible Household, or exercise the Option, as if no Consent to Transfer had been delivered.

iv. **Time Period for Notice.** The Agency shall deliver a Consent to Transfer, if applicable, not later than sixty (60) days after the date that it receives notification of an Option Event. The Agency shall deliver a Notice of Exercise, if applicable, on or before the date which is the later to occur of the following: (i) sixty (60) days after the date that the Agency receives notification of an Option Event or (ii) thirty (30) days after a Consent to Transfer has expired. For purposes of computing commencement of the delivery periods, the Agency shall be

deemed to have received notification of an Option Event on the date of delivery of a Notice of Intent to Transfer, pursuant to the terms of Paragraph 16 below, or on the date it actually receives notice of default, summons and complaint or other pleading, or other writing specifically stating that an Option Event has occurred, whichever event shall first occur. The Agency shall have no obligation to deliver a Notice of Exercise or Consent to Transfer, and the applicable time period for exercise of the Option shall not commence to run, unless and until the Agency has received notification of an Option Event in the manner specified in this subparagraph. If there is a stay or injunction imposed by court order precluding the Agency from delivering its Consent to Transfer or Notice of Exercise within the applicable time period, then the running of such period shall cease until such time as the stay is lifted or the injunction is dissolved and the Agency has been given written notice thereof, at which time the period for delivery of a Consent to Transfer or Notice of Exercise shall again begin to run.

v. **Notice of Abandonment.** If the Agency fails to deliver a Notice of Exercise or Consent to Transfer within the time periods set forth in paragraph 3.d.iv, upon request by Owner, the Agency shall cause to be filed for recordation in the Office of the Recorder of Santa Clara County, a notice of abandonment, which shall declare that the provisions of the Option are no longer applicable to the Property. Unless Owner requests recordation of notice of abandonment within 30 days of the Agency's failure to deliver Notice of Exercise or Consent to Transfer, the Agency shall have no obligation to record the notice of abandonment. Upon recordation of a notice of abandonment, the Option shall terminate and have no further force and effect. If the Agency fails to record a notice of abandonment, the sole remedy of Owner shall be to obtain a judicial order instructing prompt recordation of such a notice.

vi. **Right to Reinstatement.** If the Option Event is the recordation of a notice of default, then the Agency shall be deemed to be Owner's successor in interest under California Civil Code Section 2924c (or successor section) solely for purposes of reinstatement of any mortgage on the Property that has led to the recordation of the notice of default. As Owner's deemed successor in interest, the Agency shall be entitled to pay all amounts of principal, interest, taxes, assessments, homeowners' association fees, insurance premiums, advances, costs, attorneys' fees and expenses required to cure the default. If the Agency exercises the Option, then any and all amounts paid by the Agency pursuant to this Paragraph shall be treated as Adjustments to the Base Resale Price for the Property, as defined in Paragraph 5 below.

vii. **Inspection of Property.** After receiving a Notice of Intent to transfer or delivering a Notice of Exercise, the Agency shall be entitled to inspect the Property one or more times prior to the close of escrow to determine the amount of any Adjustments to the Base Resale Price. Before inspecting the Property, the Agency shall give Owner not less than forty-eight (48) hours' written notice of the date, time and expected duration of the inspection. The inspection shall be conducted between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding court holidays, unless the parties mutually agree in writing to another date and time. Owner shall make the Property available for inspection on the date and at the time specified in the Agency's request for inspection.

viii. **Escrow.** Promptly after delivering a Notice of Exercise, the Agency shall open an escrow account for its purchase of the Property. Close of escrow shall take place on the date that is the later to occur of the following, (a) ninety (90) days after a Notice of Exercise has been delivered, or (b) ten (10) days after Owner has performed all acts and executed all documents required for close of escrow. Prior to the close of escrow, the Agency shall deposit into escrow with a title company of Agency's choosing, an amount equal to the Adjusted Resale Price as defined in Paragraph 5 below and all escrow fees and closing costs to be paid by Agency. Commissions (not to exceed 6% of the actual sales price), closing costs and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of escrow, or as may otherwise be provided by mutual agreement. Owner agrees to perform all acts and execute all documents reasonably necessary to effectuate the close of escrow and transfer of the Property to the Agency.

ix. **Proceeds of Escrow; Removal of Exceptions to Title.** Prior to close of escrow, Owner shall cause the removal of all exceptions to title to the Property that were recorded after the Effective Date with the exception of (i) taxes for the fiscal year in which the escrow for this transaction closes, which taxes shall be prorated as between Owner and Agency as of the date of close of escrow; (ii) quasi-public utility, public alley, public street easements, and rights of way of record, and (iii) such other liens, encumbrances, reservations and restrictions as may be approved in writing by Agency ("Permitted Exceptions").

The purchase price deposited into escrow by the Agency shall be applied first to the payment of any and all Permitted Encumbrances (as defined in Paragraph 10) recorded against the Property in order of lien priority, and thereafter to the payment of Owner's share of escrow fees and closing costs. Any amounts remaining after the purchase price has been so applied, if any, shall be paid to Owner upon the close of escrow. If the purchase price is insufficient to satisfy all liens and encumbrances recorded against the Property, the Owner shall deposit into escrow such additional sums as may be required to remove said liens and encumbrances. In the event that the Agency agrees to proceed with close of escrow prior to the date that Owner has caused all exceptions to title recorded after the Effective Date other than Permitted Exceptions to be removed, then Owner shall indemnify, defend and hold Agency harmless from any and all costs expenses or liabilities (including attorneys' fees) incurred or suffered by Agency that relate to such exceptions and their removal as exceptions to title to the Property.

4. **Base Resale Price.** Prior to adjustment pursuant to Paragraph 5 the base resale price ("Base Resale Price") of the Property shall be the lowest of:

a. **Median Income.** The original price ("Base Price") paid by Owner for acquisition of the Property pursuant to the Program, increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the median household income ("Median Income") for Santa Clara County published by the California Department of Housing and Community Development, Division of Housing Policy Development, between the Effective Date and the date that the Agency receives notification of an Option Event; or

b. **Index Price.** The Base Price increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the Consumer Price Index

for All Urban Consumers for the San Francisco-Oakland-San Jose published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index") between the Recording Date and the date that the City receives notification of an Option Event; or

c. **Fair Market Value.** The fair market value of the Property as determined by an appraiser selected and paid for by Owner and approved in writing by the Agency.

To compute the Base Resale Price, the Agency may use the Base Resale Price Worksheet attached as Exhibit D hereto, or such other form as the Agency may from time to time adopt.

5. **Adjustments to Base Resale Price.** Subject to the Affordable Unit Cost restriction described in subparagraph (d) below, the Base Resale Price shall be increased or decreased, as applicable, by the following adjustment factors ("Adjustment"):

a. **Capital Improvements.** An increase for capital improvements made to the Property, but only if the amount of such improvements has been previously approved in writing by the Agency after Owner has submitted original written documentation of the cost to the Agency for verification. The amount of the Adjustment shall equal the original cost of any such capital improvements.

b. **Damages.** A decrease by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the Agency upon Agency's exercise of its Option hereunder, including, without limitation, amounts attributed to: cleaning; painting; replacing worn carpeting and draperies; making necessary structural, mechanical, electrical and plumbing repairs; and repairing or replacing built-in appliances and fixtures. Owner hereby covenants to, at Owner's expense, maintain the Property in the same condition as in existence on the date of Agency's Notice of Exercise, reasonable wear and tear excepted.

c. **Advances by the Agency.** A decrease in an amount equal to the sum of all costs advanced by the Agency for the payment of mortgages, taxes, assessments, insurance premiums, homeowner's association fees and/or associated late fees, costs, penalties, interest, attorneys' fees, pest inspections, resale inspections and other expenses related to the Property, which Owner has failed to pay or has permitted to become delinquent.

d. **Adjusted Resale Price Not to Exceed Affordable Unit Cost.** The Base Resale Price as adjusted, is hereinafter referred to as the "Adjusted Resale Price." Notwithstanding any other provision hereof to the contrary, in no event shall the Adjusted Resale Price exceed the Affordable Unit Cost.

6. **Priority and Effectiveness of the Option.**

a. **Recordation.** This Agreement shall be recorded in the Office of the Recorder of the County of Santa Clara on or as soon as practicable after the Effective Date. The Option shall have priority over any subsequent sale, conveyance, transfer, lease or other disposition or encumbrance of the Property, or of any estate or interest therein, and in the event of exercise of the Option by Agency, the Agency shall take the Property subject only to Permitted Exceptions.

Except as otherwise provided in Paragraph 7.a, the exercise of the Option by the Agency at any time and from time to time shall not extinguish the Option or cause a merger of the Option into any estate or other interest in the Property, and the Option shall continue to exist and be effective with respect to the Property against any and all subsequent owners in accordance with the terms and conditions hereof.

b. **Request for Notice of Default.** The Agency shall file a Request for Notice of Default for recordation in the Office of the Recorder of the County of Santa Clara promptly upon execution of this Agreement (see Exhibit E).

7. Survival of Option Upon Transfer.

a. **In General.** The Agency's right to exercise the Option shall survive any transfer of the Property by Owner. Each transferee, assignee or purchaser of the Property during the term hereof shall be required to execute an agreement substantially in the form of this Agreement, provided that the term of any such agreement shall be for the duration of the term hereof as of the date of any such transfer, assignment or sale. The Option may be exercised against the Property throughout the term hereof, regardless of whether the Property is owned, possessed or occupied by Owner or any successor, transferee, assignee, heir, executor, or administrator of Owner, regardless of household income (if applicable) including a debtor-in-possession, debtor or trustee pursuant to Title 11 of the United States Code. Notwithstanding the foregoing, the Option shall not survive (i) the sale and transfer of the Property to a third party purchaser pursuant to a judicial or non-judicial foreclosure or a deed-in-lieu of foreclosure under a power of sale contained in a mortgage or deed of trust held by an institutional lender, or (ii) the recording of an instrument conveying Owner's interest in the Property to the Agency, or its assignee, provided the conveyance is in accordance with the terms of this Agreement.

b. **HUD Insured Mortgage.** If Owner has acquired the Property by a mortgage insured by the Secretary of the United States Department of Housing and Urban Development, and a notice of default has been recorded pursuant to California Civil Code Section 2924 (or successor provisions), then this Option shall automatically terminate if title to the Property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the insured mortgage is assigned to the Secretary.

8. **Voidable Transfers.** As long as the Option has not been abandoned pursuant to Paragraph 3.d.v, any actual or attempted sale, conveyance, transfer or other disposition of the Property, or of any estate or interest therein, in violation of the terms and conditions of this Agreement, shall be voidable at the election of the Agency.

9. **Permitted Transfers.** Provided that the transferee assumes, within 30 days of a written request by the Agency, all of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form acceptable to Agency, or at Agency's election, execution of an agreement substantially similar to this Agreement, the following transfers ("Permitted Transfers") of title to the Property, or of any estate or interest therein, shall not be subject to the Agency's prior approval, shall not trigger the exercise of the Option, and shall not be considered Option Events: (a) a good-faith transfer by gift, devise or inheritance to Owner's spouse or issue; (b) a taking of title by a surviving joint tenant; (c) a court-ordered

transfer of title to a spouse as part of a divorce or dissolution proceeding; (d) a transfer by Owner into an inter vivos trust in which the Owner is a beneficiary and the Owner continues to occupy the property as his/her primary residence; (e) an acquisition of title, or of any interest therein, in conjunction with marriage; or (f) any good faith transfer to an Eligible Household.

Notwithstanding any Permitted Transfer, the Option shall remain effective with respect to the Property for the duration of the term hereof.

10. Permitted Encumbrances and Refinancing. This Option shall not become exercisable as the result of Owner's encumbering the Property for the purpose of securing financing to purchase the Property pursuant to the Program, to refinance indebtedness incurred to purchase the Property pursuant to the Program, or to make necessary repairs to the Property in an amount approved by Agency pursuant to Paragraph 3.d.i.ii above. The maximum aggregate amount of such encumbrances outstanding at any time (the "Permitted Encumbrance Amount") shall not exceed an amount equal to ninety percent (90%) of the Base Resale Price calculated as provided in Paragraph 4. The Permitted Encumbrance Amount shall be calculated as if the Agency had received notification of an Option Event on the earlier of (a) the date on which the deed of trust or mortgage securing the indebtedness is filed for record in the Office of the Recorder of the County of Santa Clara, or (b) the date the Agency receives Notice of Intent to Transfer pursuant to Paragraph 3.d.i above. Owner hereby covenants and agrees that he/she/they shall use his/her/their best efforts to ensure that any deed of trust or other agreement encumbering the property shall include provisions providing for notice to be delivered to Agency of any default thereunder and for Agency's right to cure such default at Agency's election.

11. Obligation of Owner After Option Abandonment. If the Agency records a notice of abandonment of the Option, then the Property may be sold by Owner to a third party without restriction as to price; however, upon such sale, Owner shall pay to Agency an amount ("Agency's Share") equal to eighty-five percent (85%) of the difference between (a) the actual sales price net of reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price), and (b) the Adjusted Resale Price. The Agency's Share shall be paid to the Agency concurrently with close of escrow on the sale of the Property, or upon receipt by Owner of the sale price for the Property, whichever shall first occur.

12. Limits on Liability. In no event shall the Agency become liable or obligated in any manner to Owner by reason of the assignment of this Agreement or the Option, nor shall Agency be in any way liable or obligated to Owner for any failure of the Agency's assignee to consummate a purchase of the Property or to comply with the terms of this Agreement or the Option, or any escrow instructions or agreement for the purchase of the Property.

13. Insurance Proceeds and Condemnation Award. In the event the Property is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild the Property, or, in the event of condemnation, if the proceeds thereof are distributed to Owner, any surplus of proceeds remaining after payment of the senior liens and encumbrances on the Property shall be distributed as follows: that portion of the surplus up to, but not to exceed, the net amount Owner would have received pursuant to Paragraph 3.d.ix had the Agency exercised

its Option on the date of the destruction of condemnation valuation date shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to the Agency.

14. Effective Date. The rights and obligations of the Agency and Owner set forth in this Agreement shall be effective as of the Effective Date.

15. Term of Agreement and Option. The restrictions contained herein and the Agency's option to purchase the Property shall continue for a period of forty-five (45) years commencing on the Effective Date.

16. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

- (a) personal delivery, in which case notice shall be deemed delivered upon receipt;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- (c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
- (d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Agency: Milpitas Redevelopment Agency
455 Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

Owner:

17. Remedies Upon Breach.

a. **Specific Performance.** Owner acknowledges that any breach in the performance of its obligations under this Agreement shall cause irreparable harm to the Agency. Owner agrees that the Agency is entitled to equitable relief in the form of specific performance upon its exercise of the Option, and that an award of damages shall not be adequate to compensate the Agency for Owner's failure to perform according to the terms of this Agreement.

b. **Other Remedies.** Agency shall have all of the remedies provided for at law or equity.

18. General Provisions.

a. **Attorneys' Fees.** If either party initiates legal proceedings to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and costs in additions to any other recovery to which it is entitled under this Agreement.

b. **No Joint Venture; No Third-Party Beneficiary.** No joint venture or other partnership exists or is created between the Parties by virtue of this Agreement. Except as expressly stated herein, this Agreement does not benefit any third party.

c. **Successors; Assignment.** This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, executors, administrators, successors and assigns. Agency shall have the right to assign all of its rights and obligations under this Agreement without the consent of Owner.

d. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior negotiations, correspondence, understandings and agreements with respect thereto. There are no representations, promises, agreements or other understandings between the Parties relating to the subject matter of this Agreement that are not expressed herein. This Agreement may be modified only by an instrument in writing executed by the Parties or their respective successors in interest.

e. **Survival; No Merger.** All of the terms, provisions, representations, warranties and covenants of the Parties under this Agreement shall survive the close of escrow of any sale of the Property and shall not be merged in any deed transferring the Property.

f. **Authority And Execution.** Each Party represents and warrants that it has full power and authority to enter into this Agreement and to undertake all of its obligations hereunder, that each person executing this Agreement on its behalf is duly and validly authorized to do so.

g. **Severability.** The invalidity or unenforceability of any term or provision of this Agreement shall not impair or affect the remainder of this Agreement, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

h. **Waiver; Modification.** No waiver or modification of this Agreement or any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. No evidence or any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the Parties arising out of or affecting this Agreement or the rights or obligations of any Party hereunder, unless such waiver or modification is in writing and duly executed as aforesaid. The provisions of this section may not be waived except as herein set forth. A waiver or breach of any covenant, condition or provision of this Agreement shall not be deemed a waiver of any other covenant, condition or provision hereof.

i. **Construction.** The section headings and captions used in this Agreement are for convenience of reference only and shall not modify, define, limit or amplify any of the terms or provisions hereof. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it.

j. **Governing Law.** This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California.

k. **Time of the Essence.** Time is of the essence in this Agreement as to each provision in which time is an element of performance.

l. **Further Assurances.** Each Party will, upon reasonable request of the other Party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents as may be reasonably necessary in order to fulfill the intents and purposes of this Agreement.

m. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

OWNER(S):

AGENCY:

MILPITAS REDEVELOPMENT AGENCY

Executive Director

COUNTY OF _____)

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Signature _____

STATE OF CALIFORNIA)
COUNTY OF _____)

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Signature _____

(Seal)

COUNTY OF _____)

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(Seal)

CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by the Resale Restriction and Option to Purchase Agreement dated _____ from _____ to the Milpitas Redevelopment Agency is hereby accepted by the undersigned office or agent on behalf of the Milpitas Redevelopment Agency pursuant to authority conferred by the Resolution No. _____ dated _____; and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____

Its: _____

EXHIBIT A
to Resale Agreement

Legal Description

[To be inserted]

EXHIBIT B
to Resale Agreement

FORM: NOTICE OF INTENT TO TRANSFER

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

To: Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Agency Executive Director

Date: _____

Re: Notice of Intent to Transfer

Pursuant to the terms of the Resale Restriction and Option to Purchase Agreement, dated _____, the undersigned Owner(s), _____, hereby give(s) notice of his/her/their intent to transfer the property located at _____, Milpitas, California (the "Property"). Owner may be contacted at the Property or at the following address:

Owner's daytime telephone number is (____) _____

[If applicable: The proposed transfer of the Property is to the following person(s):

Name: _____

Address: _____

Telephone: (____) _____]

The proposed transfer is (check one):

Sale

Other

Specify: _____

Owner(s) signature(s):

EXHIBIT C
to Resale Agreement
FORM: NOTICE OF EXERCISE

Date: _____

To: _____
Owner or Transferee

Address

Re: Notice of Exercise

The Milpitas Redevelopment Agency ("Agency") hereby gives notice that it is exercising its option to purchase the real property located at _____, Milpitas, California. The option has been granted to the Agency pursuant to the Resale Restriction and Option to Purchase Agreement between Owner and the Agency dated _____ and recorded on _____ as Instrument No. _____. [The Agency has assigned its option to purchase the real property to _____.] An escrow for the purchase will be opened with the First American Title Company.

REDEVELOPMENT AGENCY

By: _____

Its: _____

EXHIBIT D
to Resale Agreement

BASE RESALE PRICE WORKSHEET

Date: _____
Owner: _____
Address: _____
Purchase Price: _____
Date of Purchase: _____
Years Owned: _____ years

METHOD #1: CALCULATION BASED ON INCREASE IN MEDIAN INCOME***			
Present Median Income: \$ _____ Family of four, County of Santa Clara (at time of sale of unit)	Effective Date: _____		
Original Median Income: \$ _____ Family of four, County of Santa Clara (at time of purchase of unit)	Effective Date: _____		
Amount of Increase: _____ Family of four, County of Santa Clara (Present median income minus original median income)			
Increase in Price: _____	x _____	x _____	= _____
Method #1 Resale Price: _____	+	= _____	
METHOD #2: CALCULATION BASED ON INCREASE IN MEDIAN INCOME			
Present CPI: _____	Effective Date: _____		
Original CPI: _____	Effective Date: _____		
Rate of Increase: _____ per annum			
Increase in Price: _____	x _____	x _____	= _____
Method #2 Resale Price: _____	+	= _____	
Based on the above, the base resale price as of this date, _____, is: _____			

By: _____

REQUEST FOR NOTICE OF DEFAULT

WITNESS my hand and official seal.

Signature _____

(This area for official notarial seal)

EXHIBIT F
to Resale Agreement

DISCLOSURE STATEMENT

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY YOU ARE BUYING. EXCEPT FOR A TRANSFER TO THE CITY FOLLOWING CITY'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN "ELIGIBLE HOUSEHOLD" AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE WHICH IS CAPPED AT AN "AFFORDABLE HOUSING COST."

THIS MEANS THAT YOU MAY NOT SELL THE PROPERTY FOR MARKET VALUE TO WHOMEVER YOU LIKE.

THESE RESTRICTIONS WILL BE IN EFFECT UNTIL _____.
ANY SALE OF THE PROPERTY IN VIOLATION OF THE RESTRICTIONS SHALL BE VOIDABLE AT THE ELECTION OF THE CITY.

TO DETERMINE WHO AN ELIGIBLE HOUSEHOLD IS, AND WHAT THE ADJUSTED RESALE PRICE AND AFFORDABLE HOUSING COST ARE, YOU SHOULD CONTACT THE MILPITAS REDEVELOPMENT AGENCY.

YOU SHOULD ALSO READ THE RESALE RESTRICTION AND OPTION TO PURCHASE AGREEMENT RECORDED AGAINST THE PROPERTY. YOU MAY OBTAIN A COPY FROM THE MILPITAS REDEVELOPMENT AGENCY OR FROM THE ESCROW COMPANY.

I HAVE READ THE FOREGOING AND I UNDERSTAND WHAT IT MEANS.

BUYER

BUYER

EXHIBIT D

Promissory Note

**PROMISSORY NOTE
SECURED BY DEED OF TRUST**

\$ _____, California

FOR VALUE RECEIVED, the undersigned, _____, ("Borrowers"), hereby jointly and severally promises to pay to the Milpitas Redevelopment Agency and its assigns ("Lender"), or to Lender's order, at 455 East Calaveras Boulevard, Milpitas, California, 95035, or at such other place as Lender may from time to time designate by written notice to Borrowers, lawful money of the United States of America as hereafter set forth.

1. **DEFINITIONS.** The following definitions shall apply throughout this Promissory Note:

- 1.1. **Borrowers.** _____, and their successors and assigns.
- 1.2. **Lender.** Milpitas Redevelopment Agency, and its successors and assigns.
- 1.3. **Principal Sum.** _____ (\$ _____) secured by the Deed of Trust attached hereto in Exhibit B.
- 1.4. **Property.** The following described property located in the County of Santa Clara, State of California:

[legal description]

which property has the address of _____, Milpitas, CA 95035
- 1.5. **Renting or Leasing.** Any attempt to rent or lease a portion of, or the entire, residential dwelling located on the Property or any other portion of the Property thereof.
- 1.6. **Sale.** Any transfer of title to the Property, or the execution of an installment sale contract giving the purchaser a right to possess the Property before transfer of title. Notwithstanding the foregoing, the following shall not be considered a Sale: (a) the creation of a lien or other encumbrance subordinate to Lender's security instrument which does not relate to a transfer of rights of occupancy; (b) the creation of a purchase money security interest for household appliances; (c) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety; (d) a transfer to a relative resulting from the death of a Borrower; (e) a transfer where a spouse or child of a Borrower becomes an owner of the Property; (f) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or incidental property settlement agreement by which the spouse of a Borrower becomes a sole owner of the Property; and (g) a transfer into an inter vivos trust in which a Borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the Property.

2. **INTEREST.** Beginning on the sixty-first (61st) month after the recordation of the Deed of Trust and continuing until the Note is repaid in full, the Principal Sum shall bear interest at the rate paid on the Lender's deposits to the Local Agency Investment Account on the date of this Promissory Note is executed plus one percent (1%) per annum.
3. **DUE ON SALE.** This Promissory Note shall be due and payable in full upon the occurrence of any Sale.
4. **DUE ON RENTING OR LEASING.** This Promissory Note shall also be due and payable in full upon Renting or Leasing.
5. **AMOUNT AND TIME OF PAYMENT.** The Principal Sum and an accrued interest shall be due and payable on the date that is twenty-five (25) years from the commencement of payment on the Principal Sum and interest as provided for in Section 2.
6. **PAYMENTS.** Beginning on the date of recordation of the Deed of Trust and continuing through each anniversary thereafter until the Agency is repaid, annual payments shall be made to Agency by Borrowers as on the amortization schedule attached hereto as Exhibit A and incorporated by reference herein. Payments on the principal and interest shall not commence until the sixty-first (61st) month after recordation of the Deed of Trust.
7. **PREPAYMENT.** Borrowers shall have the right at any time to prepay the Principal Amount of this Promissory Note. The Principal Amount of this Promissory Note shall be deemed paid in full when prepayments equal the Principal Sum, plus simple interest on the Principal sum from the date of this note to the date of payment at the rate set forth in Section 2.
8. **SECURITY.** This Promissory Note is secured by a Subordinate Deed of Trust of even date herewith.
9. **DEFAULT UNDER DEED OF TRUST.** If default occurs in any of the covenants or agreements contained in the Deed of Trust securing this Promissory Note, this Promissory Note shall immediately become due and payable in full at the option of Lender. Failure by Lender to exercise its option to accelerate in the event of a default shall not constitute waiver of the right to exercise such option in the event of the same or any other default. In the event Lender exercises such an option, the amount due and payable shall be as provided in Section 4 of this Note.
10. **REMEDIES.** Lender shall have available any such remedy provided by law or equity including foreclosure.
11. **COSTS AND ATTORNEYS' FEES.** If suit is brought to collect this Promissory Note, Lender shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to reasonable attorneys' fees.

12. **SEVERABILITY.** The covenants of this Promissory Note are severable. Invalidation of any covenant or any part thereof by law, judgment, or court order shall not affect the validity of any other covenant.

BORROWERS

Name

Name

Acknowledgement

Lender

EXHIBIT E

Subordinate Deed of Trust

RECORDING REQUESTED PURSUANT TO
GOVERNMENT CODE SECTION 27383

When Recorded Mail to:

Milpitas Redevelopment Agency
455 East Calaveras Blvd
Milpitas, CA 95035
Attn: Executive Director

SUBORDINATE DEED OF TRUST

THIS DEED OF TRUST is made this _____ Day of _____ 2002, among the Trustor, (herein "Borrower"), the City of Milpitas (herein "Trustee"), and the Beneficiary, Milpitas Redevelopment Agency, a public body, corporate and politic, organized and existing under the laws of the State of California, whose address is 355 Calaveras Boulevard, Milpitas, California 9503594804 (herein "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, WITH POWER OF SALE, the following described property located in the County of Santa Clara, State of California:

[legal description]

which has the address of _____, **Milpitas, CA 95035** (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which shall be deemed to be and remain a part of the property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property";

TO SECURE to Lender the repayment of the indebtedness evidenced by a promissory note dated _____ and extensions and renewals thereof (herein "Note"), in the principal sum of _____ (\$ _____), with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

2. Application and Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraph 1 hereof shall be applied by Lender first in payment of interest payable on the Note, and then to the principal of the Note.

3. Prior Mortgages and Deeds of Trust; Charges, Liens. Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust, or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.

4. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards, included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

In the event of loss, Borrower shall give prompt notice the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance offers to settle a claim for insurance benefits, Lender is authorized to collect and apply insurance proceeds at Lender's option either to restoration and repair of the Property or to sums secured by this Deed of Trust.

5 Preservation and Maintenance of Property. Borrower shall keep the property in good repair and shall not commit waste or permit impairment or deterioration of the Property. If this Deed of Trust is on a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

6. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as is necessary to protect Lender's interest, including reinstating any default under the senior loan by payment of the amount in default, excluding accelerated principal, but including reasonable costs and expenses and trustees' and attorneys' fees. If Lender required mortgage insurance is a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 6, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take any action hereunder.

7. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

8. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, Deed of Trust or other security agreement with a lien which priority over this Deed of Trust.

9. Borrower Not Released; Forbearance by Lender Not a Waiver. Extension of time for payment or modification or amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successor's in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

10. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions and paragraph 15 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property of Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust, and (c) agrees that Lender and any other Borrower hereunder may agree to extend,

modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or note, without the Borrower's and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

11. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to borrower or Lender when given in the manner designated herein.

12. Governing Law; Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

13. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

14. Mortgage Loan Agreement. Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims, or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

15. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person), Lender may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Deed of Trust, or if Lender has executed a separate written waiver of this option.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

16. **Acceleration; Remedies.** Except as provided in paragraph 15 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 11 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than ten (10) days from the date of notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such reach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to ~~reinstate~~ ~~the right to bring a court action to assert~~ the nonexistence of a default or other defense of Borrower to acceleration and sale. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 16, including but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender election to cause the Property to be sold and shall cause such notice to be recorded in each county which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall have public notice of sale to the persons and in the manner prescribed by applicable law. After lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made herein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

17. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided herein, including

but not limited to , reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

18. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 16 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 16 hereof or abandonment of the Property, Lender, in person, by agent, or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

19. Subordination. Lender and Borrower acknowledge and agree that this Deed of Trust is subject and subordinate in all respects to the liens, terms, covenants, and conditions of the first deed of trust and to all advances heretofore made or which may hereafter be made pursuant to the first deed of trust including all sums advanced for the purpose of protecting or further securing the lien of the first deed of trust, or curing defaults by the Borrower under the first deed of trust.

Except as specifically set forth in this paragraph 19, Borrower may not subordinate this Deed of Trust to any other security instrument, promissory note, lien or other such similar document without first obtaining prior written approval of Lender. Additionally, Borrower agrees that the property subject to this Deed of Trust shall not be refinanced in order that Borrower may withdraw cash from the equity in the Property, unless such a refinance is for hardship reasons which shall be reviewed and approved in the sole and absolute discretion of the Lender.

20. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay costs of recordation, if any.

21. Substitute Trustee. Lender, at Lender's option, may from time to time appoint a successor trustee to any trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county where the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Instrument is recorded and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. This

procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

22. Request for Notices. Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address. Lender requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to Lender's address, as set forth on page one of this Deed of Trust, as provided by Section 2924(b) of the Civil Code of California.

23. Statement of Obligation. Lender may collect a fee not to exceed \$50 for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

24. Residency. Borrower agrees that the Property subject to this Deed of Trust shall be owner-occupied by Borrower, and failure to do so occupy constitutes a default under the Deed of Trust and the Note.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

BORROWER

Name

Name

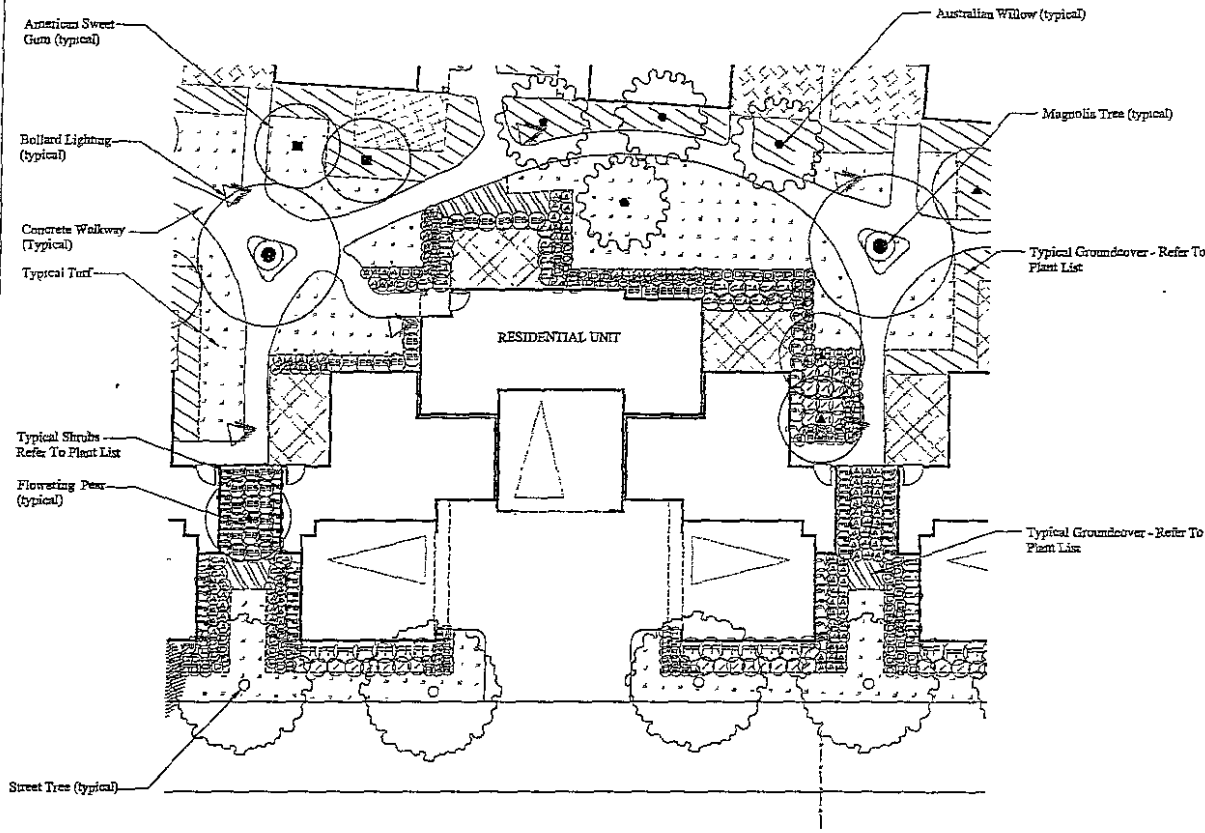
ATTACHMENT NO. 4

**SCOPE OF DEVELOPMENT
(PROJECT DESCRIPTION, CONCEPTUAL SITE PLAN & ELEVATIONS)**

Project Description

The site shall be developed via the demolition of certain parts on an existing retail shopping center. The project shall consist of 65 residential units. Included within the 65 units there shall be 16 affordable (Moderate Deed Restricted) housing units.

The Project shall be constructed in accordance with Use Permit No. UP2002-43 and Site and Architecture Review (SZ2003-13).



PLANT LIST
PROBABLE BUILDING FOUNDATION PLANTING SCHEME FOR
RESIDENTIAL AREA:

TREES	BOTANICAL NAME	COMMON NAME
⊙	MAGNOLIA GRANDIFLORA 'LITTLE GEM'	SOUTHERN MAGNOLIA
•	PIRUS C...INA 'CHANNY JEFF'	FLOWERING PEAR
•	LIQUIDAMBAR STYRACIFLUA	AMERICAN SWEET GUM
•	GEDERA PARVIFLORA	AUSTRALIAN WILLOW

SHRUBS	BOTANICAL NAME	COMMON NAME
•	AGAPANTHUS AFRICANUS	LILY-OF-THE-NILE
•	CAMELLIA JAPONICA 'KUMASAKA'	CAMELLIA-PINK
•	DIETES VEGATA	FORTNIGHT LILY
•	ESCALLONIA 'COMPACTA'	ESCALLONIA
•	HEMERO...BRIDS	EVERGREEN DAYLILY
•	PHOTINIA...DA	FRASER PHOTINIA
•	PITTOSPORUM...BIRA	TURNER'S DWARF TOBIRA
•	PITTOSPORUM TOBIRA 'VARIEGATA'	VARIEGATED TOBIRA
•	RHAPHIOLEPIS INDICA 'PINK DA'	INDIA DWARF HAWTHORN

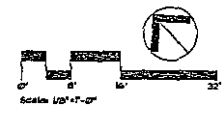
GROUNDCOVERS	BOTANICAL NAME	COMMON NAME
•	FRAGARIA...PANDA'	ORNAMENTAL STRAWBERRY
•	GAZANIA...BRID	GAZANIA
•	TURF	HYDROSEEDED TURF

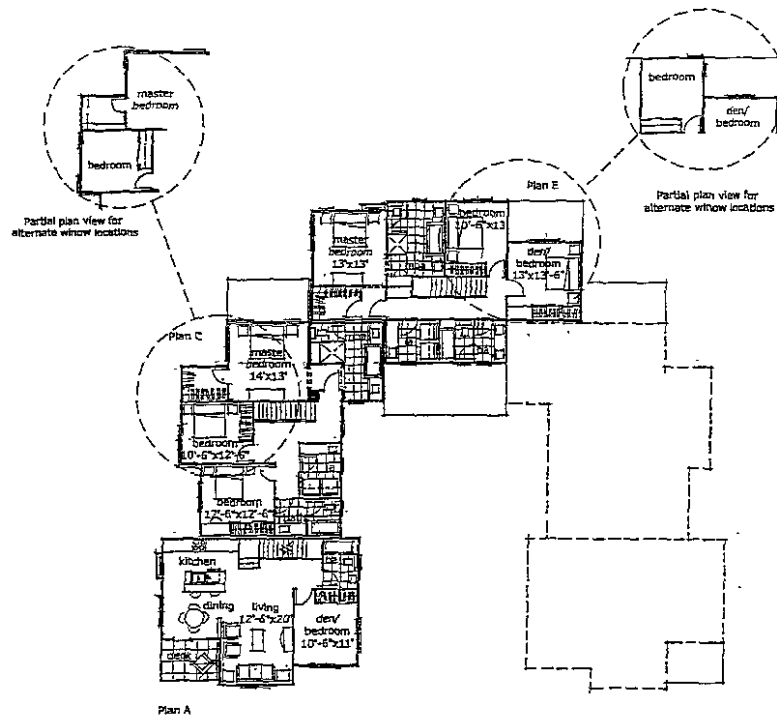
NOTE: ALL SHRUB AREAS SHALL BE COVERED WITH 50% 3"-4" BARK MULCH.



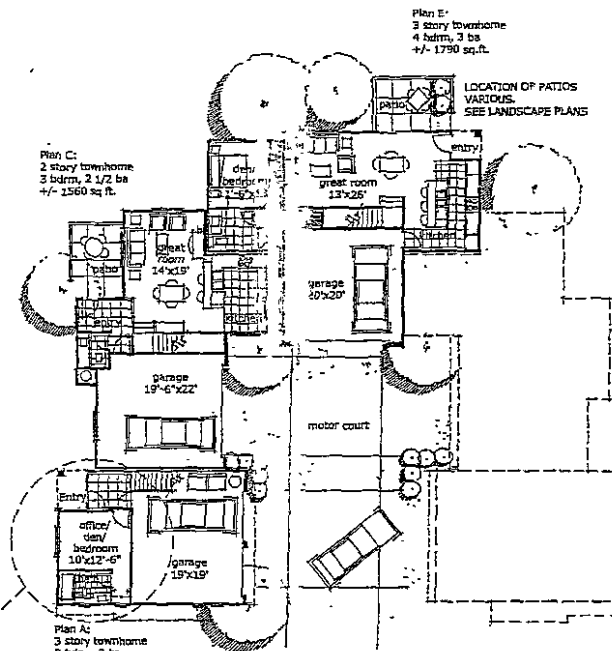
Conceptual Landscape Plan

Residential Portion-Typical Building Enlargement

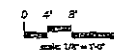




Second Floor



First Floor



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ARCHITECTS
200 WEST AVENUE, SUITE 200
DANVILLE, CALIFORNIA 94618
TEL: 925-464-0200
FAX: 925-464-0201
WWW.CRAIGGRANTARCH.COM



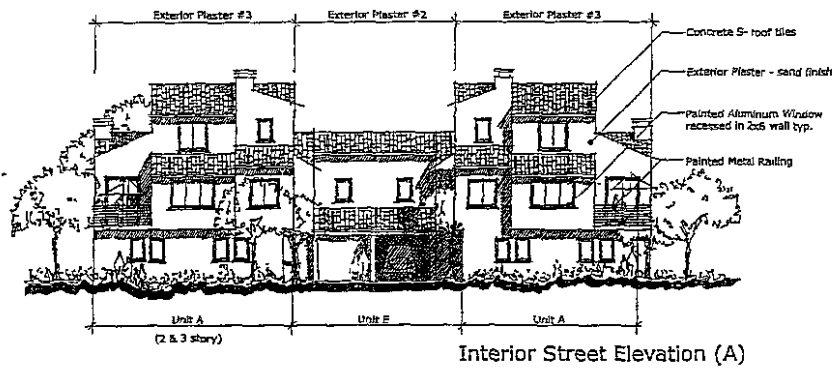
THOMAS & COOK ARCHITECTS, INC.
1000 MARSHALL BLVD., SUITE 200
IRVINE, CA 92612
TEL: 949-453-0700
FAX: 949-453-0701

MILPITAS TOWN CENTER
MILPITAS, CALIFORNIA

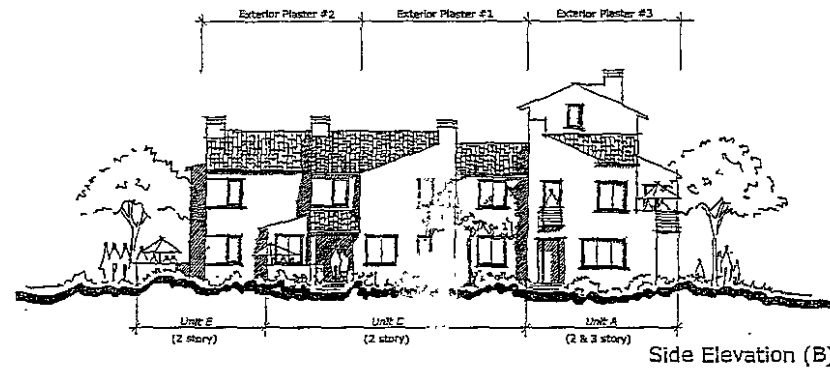
Cluster Townhome
Building Type I
Plans



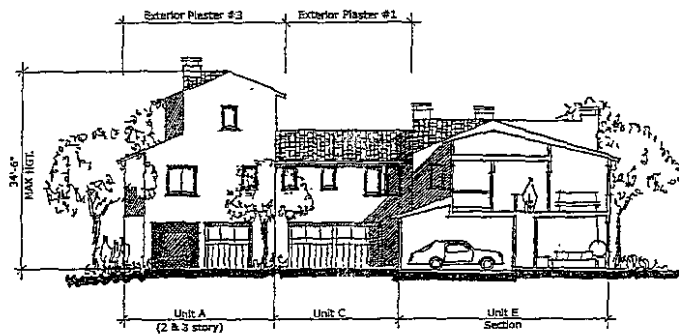
RA1.0
01/09/04



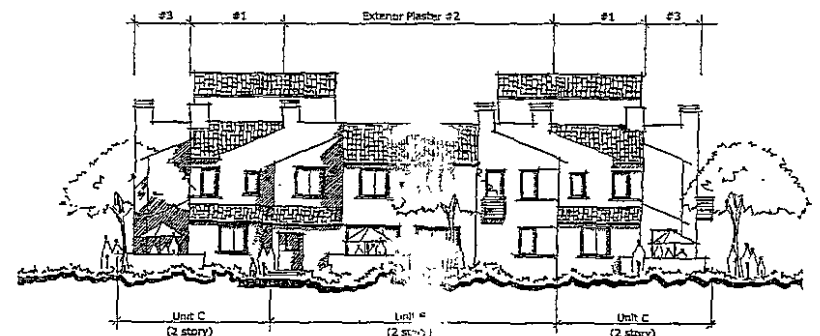
Interior Street Elevation (A)



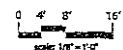
Side Elevation (B)



Motor Court Elevation (C)



Paseo Elevation (D)



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ARCHITECTS

201 W. 10th Ave., Suite 200
Boulder, Colorado 80502
PHONE: 303-440-1700
FAX: 303-440-1701
WWW.CRAIGGRANTARCHITECTS.COM

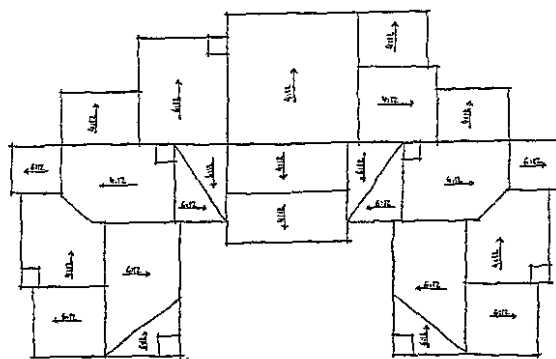


THOMAS & CO. ARCHITECTS
10750 MacArthur Blvd., Suite 200
Irvine, CA 92618
TEL: 949-453-0270
FAX: 949-453-0288

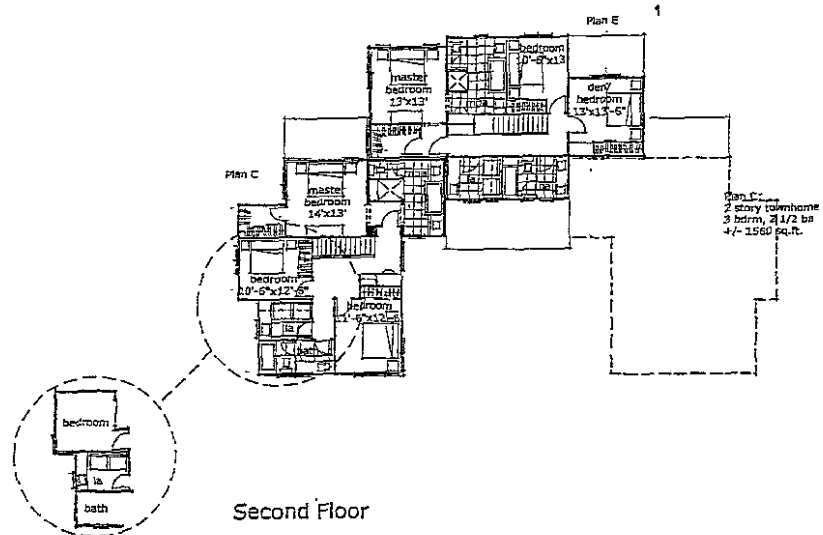
MILPITAS TOWN CENTER
MILPITAS, CALIFORNIA

Cluster Townhome
Building Type I
Elevations

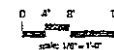
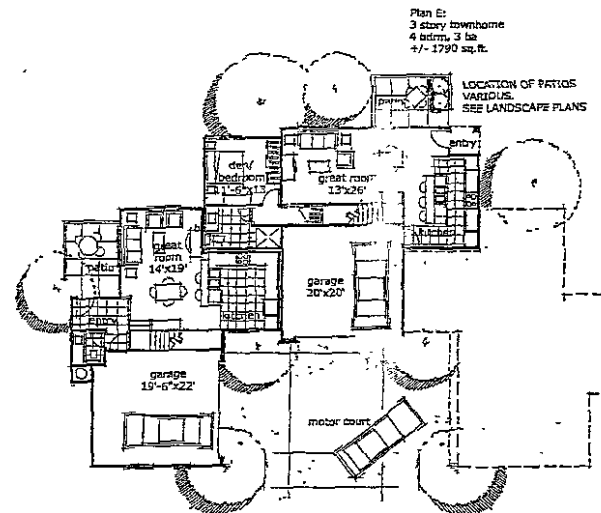
RA3.0
01/09/04



Roof Plan



Partial plan view for
alternate window locations



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ARCHITECTS

301 WEST ANNE, SUITE 300
DANFORTH, CALIFORNIA
94526
PHONE 925-452-7400
FAX 925-452-7401
WWW.CRAIGGRANT.COM



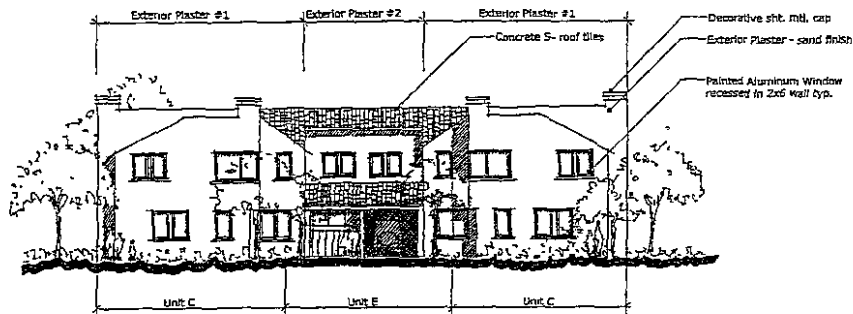
THOMAS R. COX
ARCHITECTS, INC.
10712 LAMAR AVENUE, SUITE 200
DANFORTH, CA 94526
TEL 925-452-0270
FAX 925-452-0271

MILPITAS TOWN CENTER
MILPITAS, CALIFORNIA

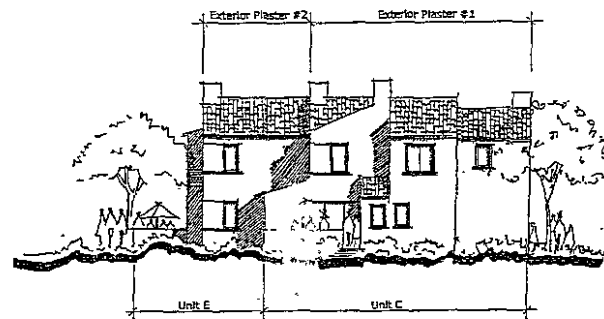
Cluster Townhome
Building Type II
Plans and Roof Plan



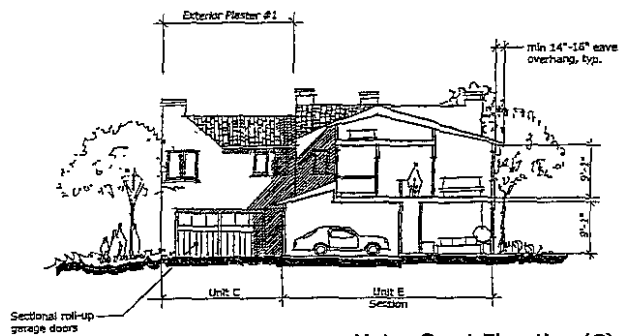
RA4.0
01/09/04



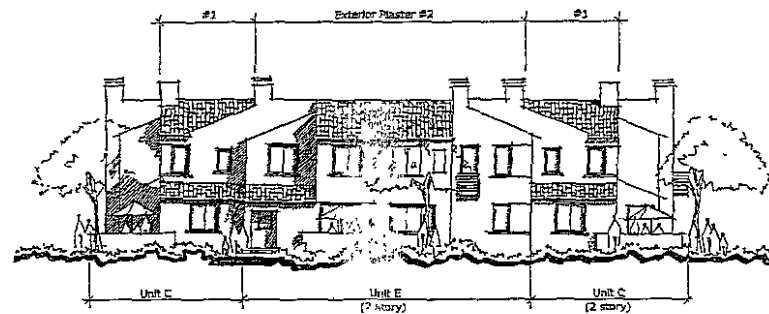
Interior Street Elevation (A)



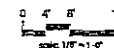
Side Elevation (B)



Motor Court Elevation (C)



Paseo Elevation (D)



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ARCHITECTS

301 WEST AVENUE, SUITE 300
MILPITAS, CALIFORNIA 95035
TELEPHONE: 408-959-7766
FACSIMILE: 408-959-7886
E-MAIL: CRAIG@CRAIGGRANT.COM



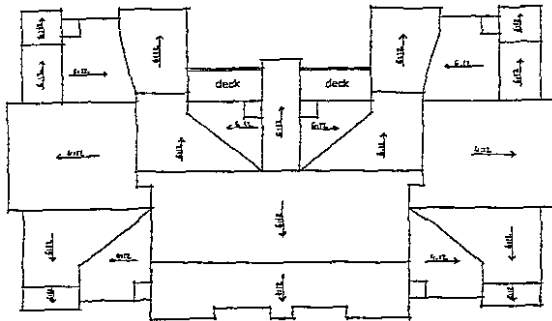
THOMAS B. COOK
14762 MAUNTERLIN BLVD.
SUITE 200
FARMERS, CALIFORNIA 95122
TEL: 408-959-0270
FAX: 408-959-0288

MILPITAS TOWN CENTER
MILPITAS, CALIFORNIA

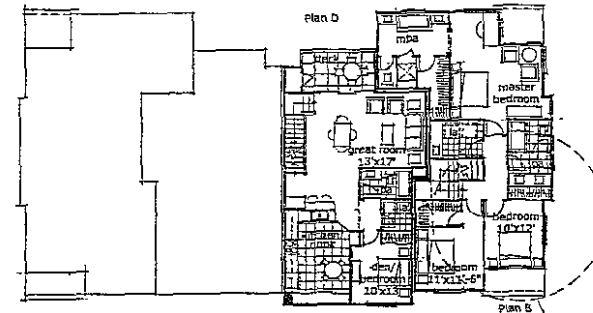
Cluster Townhome
Building Type II
Elevations



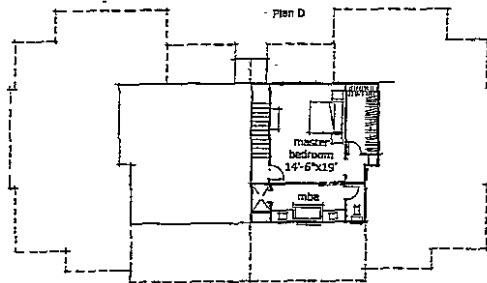
RA5.0
01/09/04



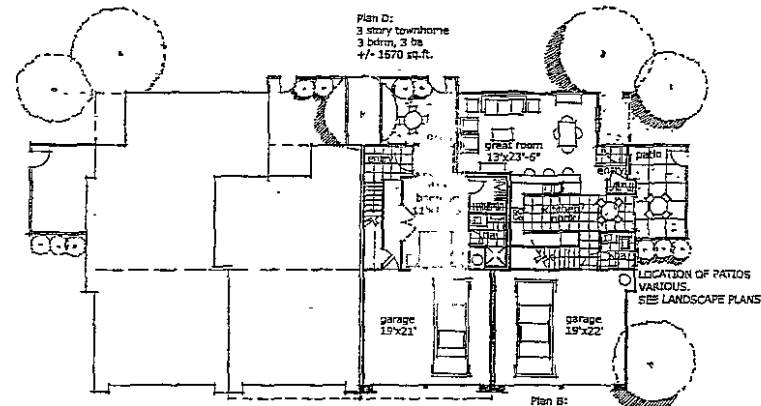
Roof Plan



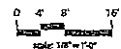
Second Floor



Third Floor
(Max. Area of 3rd floor=500 SF.)



First Floor



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ARCHITECTS
301 WEST ANGELES, SUITE 100
DOWNTOWN, CALIFORNIA
TELEPHONE: 310-410-7380
FACSIMILE: 310-410-7380
E-MAIL: CAG@CAG-ARCH.COM



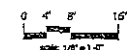
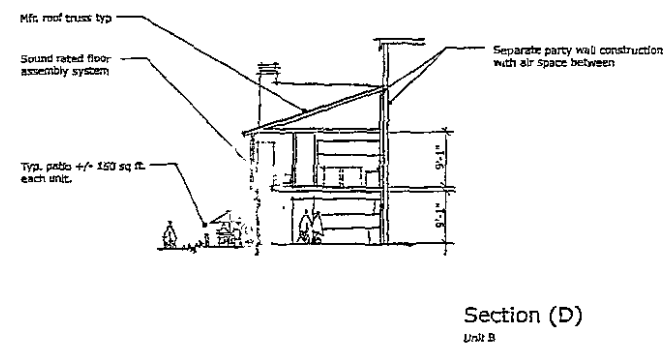
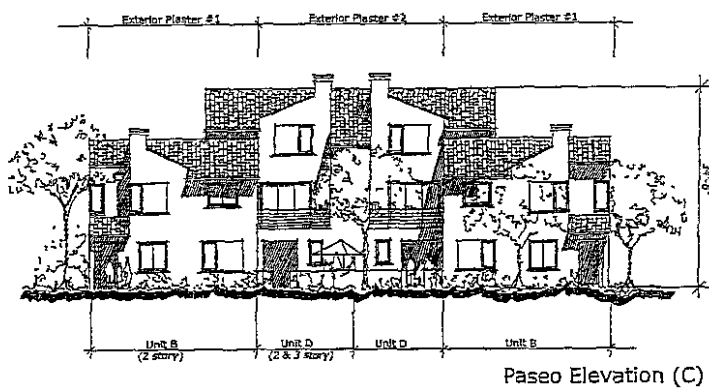
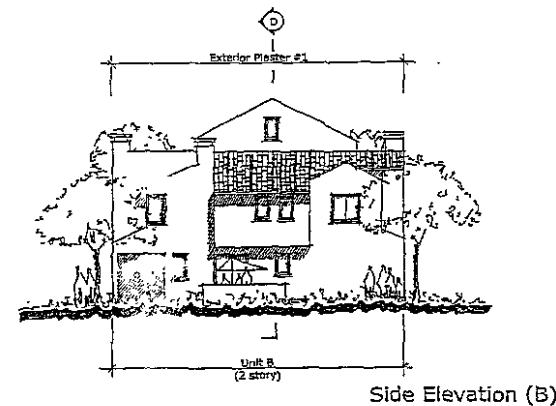
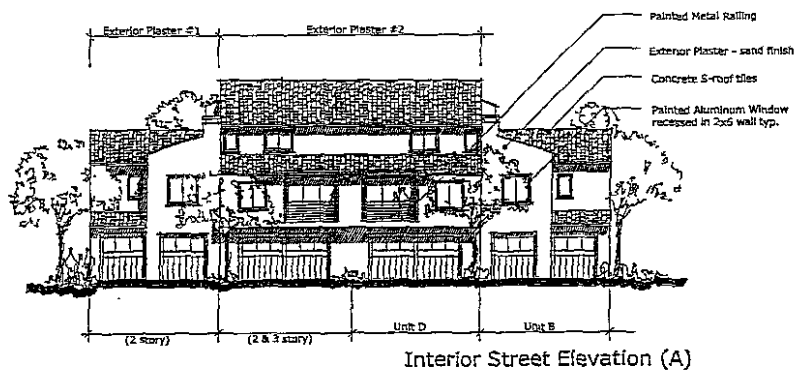
THOMAS B. CLARK
ARCHITECTS, INC.
15750 MEADOWCREEK BLVD.
SUITE 300
DOWNTOWN, CALIFORNIA
TELEPHONE: 310-410-7380
FACSIMILE: 310-410-7380
E-MAIL: TBC@TBC-ARCH.COM

MILPITAS TOWN CENTER
MILPITAS, CALIFORNIA

Cluster Townhome
Building Type III
Plans and Roof Plan



RA6.0
01/09/04

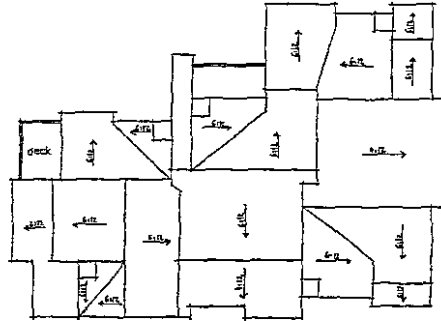


201 WEST AVENUE, SUITE 200
DANFORTH, CALIFORNIA 94526
PHONE: 916-441-1100
FAX: 916-441-1101
THOMAS & COOK ARCHITECT, INC.

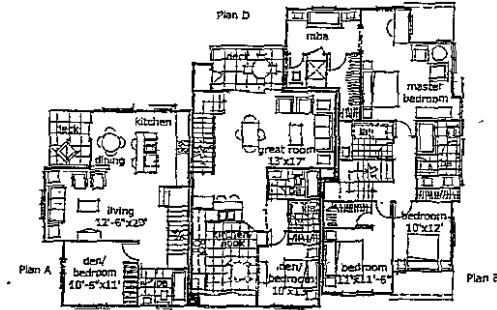
MILPITAS TOWN CENTER
MILPITAS, CALIFORNIA

Cluster Townhome
Building Type III
Elevations

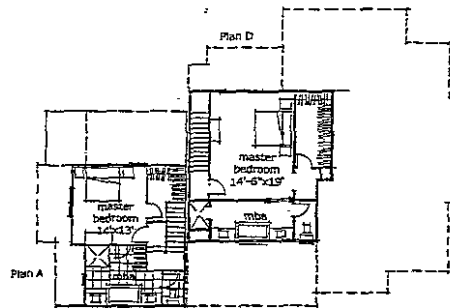
RA7.0
01/09/04



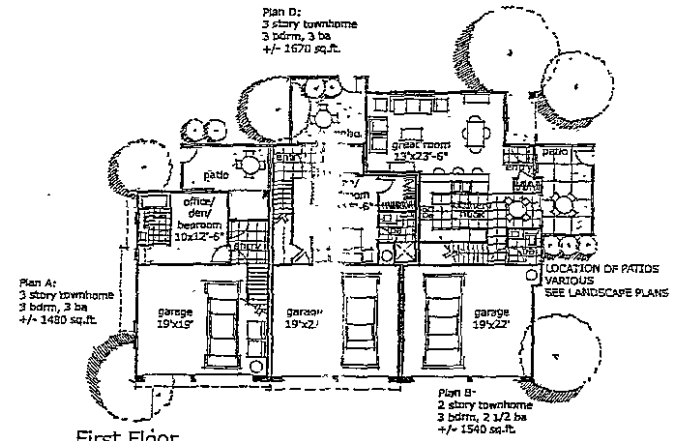
Roof Plan



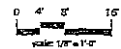
Second Floor



Third Floor
(Max. Area of 3rd floor-500 SF.)



First Floor



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ARCHITECTS
10101 AVALON BLVD. SUITE 100
DANVILLE, CALIFORNIA 94526
PHONE 925-462-1000
FAX 925-462-1001
WWW.CRAIGGRANTARCH.COM

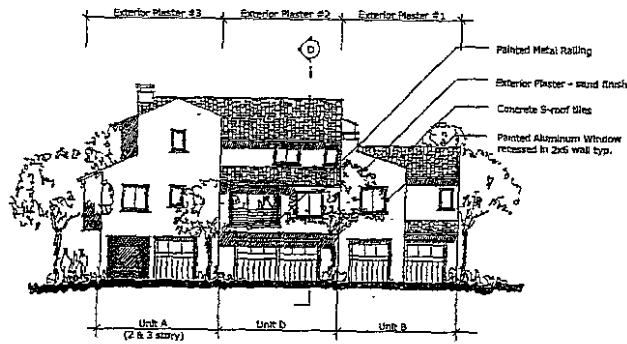


THOMAS & COOK
ARCHITECTS, INC.
10702 MONTEVERDE AVE.
SUITE 200
JANUARIA, CALIF. 94531
TEL. 925-462-0277
FAX. 925-462-0288

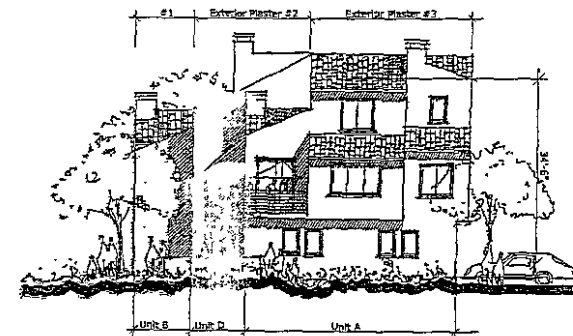
MILPITAS TOWN CENTER
MILPITAS, CALIFORNIA

Cluster Townhome
Building Type IV
Plans and Roof Plan

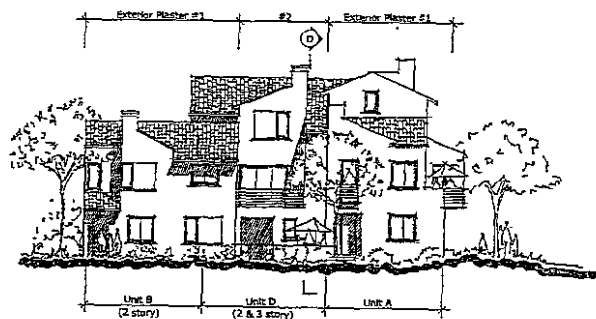
RA8.0
01/09/04



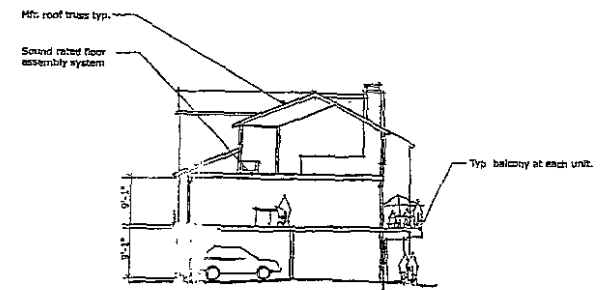
Interior Street Elevation (A)



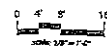
Side Elevation (B)



Paseo Elevation (C)



Section (D)
Unit D



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ARCHITECTS
301 WEST ANGELES, SUITE 100
DANFORTH, CALIFORNIA
91604
TEL: 916.441.1111
FAX: 916.441.1112
WWW.CRAIGGRANT.COM



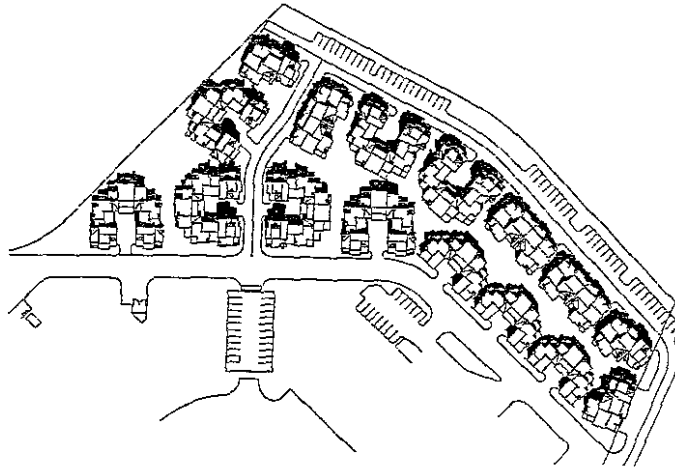
THOMAS E. COOK
ARCHITECTS, INC.
10101 MARSHALL BLVD.
SUITE 300
PUEBLO, CO 81002
TEL: 719.582.0070
FAX: 719.582.0071

MILPITAS TOWN CENTER
MILPITAS, CALIFORNIA

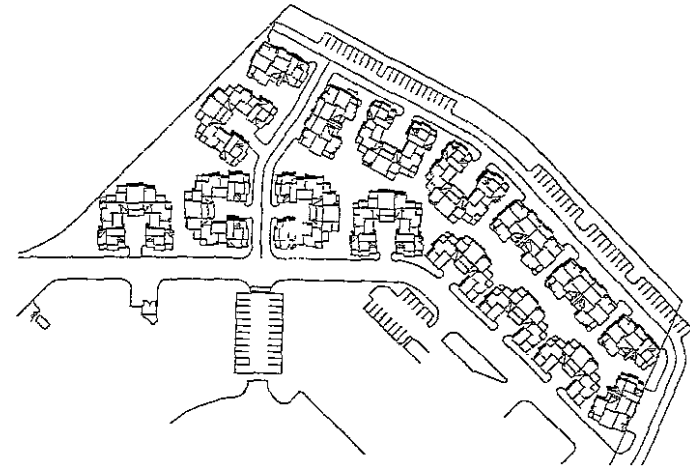
Cluster Townhome
Building Type IV
Elevations



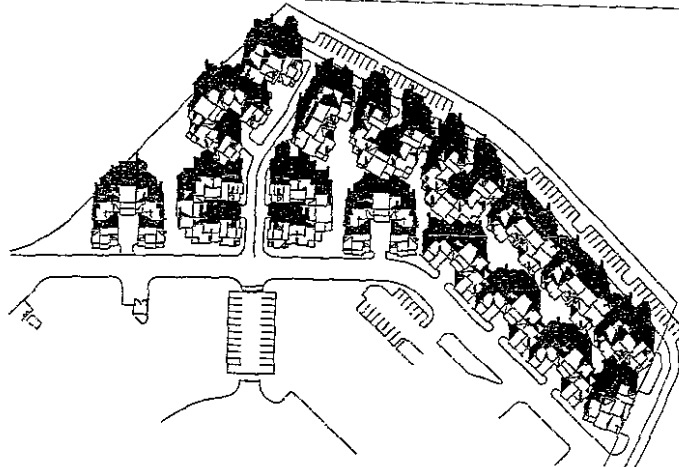
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01/09/04



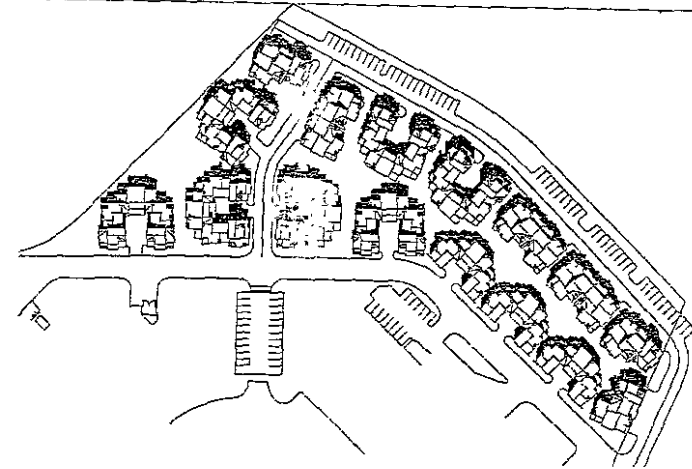
March 21, noon



June 21, noon



December 21, noon



September 22, noon



NOT TO SCALE

CRAIG
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GRANT



ARCHITECTS

1000 BAYVIEW BLVD., SUITE 200
MILPITAS, CALIFORNIA 95035
TEL: 408-261-1000
FAX: 408-261-1001



THOMAS & COX
ARCHITECTS, INC.
1000 BAYVIEW BLVD., SUITE 200
MILPITAS, CALIFORNIA 95035
TEL: 408-261-1000
FAX: 408-261-1001

MILPITAS TOWN CENTER
MILPITAS, CALIFORNIA

Sun and Shadow Study



RA10.0
01/09/04

ATTACHMENT NO. 5

IMPROVEMENTS TO BE CONSTRUCTED BY PARTICIPANT

a) **Off-Site Public Improvements** – Participant shall construct the following off-site improvements (“the Off-Site Improvements”) to the approval of the City:

- i) Improvements to parking lot/drive aisle in the vicinity of the Veteran’s Memorial to create a single perpendicular intersection with the proposed Town Center ring road (near the existing Staples store). The parties estimate that the cost of construction of this item is \$141,000.
- ii) Installation of pedestrian crossing pole-lights and replacement of the crosswalk pavement with decorative paving, or similar improvements to the approval of the City Engineer that will improve the safety of pedestrians crossing Milpitas Boulevard near the library. The parties estimate that the cost of construction of this item is \$34,320.

The parties estimate that the aggregate cost of these Off-Site Improvements is \$175,920.

Prior to issuance of any building permit for the Project, participant shall obtain City approval of the construction plans for the above Off-Site Improvements and shall execute a public improvement agreement that secures the construction of the Off-Site Improvements. Participant shall complete construction of the Off-Site Improvements listed above and included within the public improvement agreement prior to issuance of the first certificate of occupancy for the Project.

b) **Off-Site Public Improvements** – Participant shall, prior to the issuance of the first building permit in the Project, pay an amount equal to \$92,400 for construction of the following off-site improvement.

- i) Reconstruction of a sidewalk connection on city property, along the north side of the current library that connects the main entrance of the library to the Town Center shopping center near the existing Staples store. These enhancements shall include decorative pavement, illuminated bollards, and trees with uplighting.

c) **Private Improvements on Shapell Property** – Participant shall construct the following improvements (“the Private Improvements”) on Shapell property to the approval of the City prior to the issuance of any certificate of occupancy:

- i) Construct a new decorative crosswalk across Beresford Court that connects from the end of the south sidewalk (at Beresford Square) to the sidewalk on the north, to provide access to Milpitas Boulevard. In addition, any existing sidewalk on the south end after said point shall be removed. The parties estimate that the cost of construction of this item is \$22,920.
- ii) Construct a decorative pedestrian path (to include lighting, landscaping and upgraded paving) from the entrance to Albertson’s/Longs through the Beresford Center parking lot to safely connect pedestrians to the sidewalk on the west side of Milpitas Boulevard. The parties estimate that the cost of construction of this

item is \$64,020.

- iii) Construct a new ramp that connects from the Town Center to the Berryessa Creek trail and bridge on Shapell Town Center property. The parties estimate that the cost of construction of this item is \$36,000.

Prior to issuance of any building permit for the Project, Participant shall receive City approval of construction plans for the above Private Improvement Items (i), (ii), and (iii). Prior to first occupancy of the Project all Private Improvement Items (i-iii) shall be constructed. The parties estimate that the total cost of the Private Improvements is \$122,940.

The parties estimate the total value of the Participant's contribution to construct the Private Improvements and the Off-Site Improvements to be \$391,260.

ATTACHMENT NO. 6

PRELIMINARY DISTRIBUTION PLAN

ATTACHMENT NO. 7

SCHEDULE OF PERFORMANCE

Action	Date
Execution of OPA	Prior to issuance of first building permit of Project.
Submission to the City of required drawings and supplemental reports for construction permits, including but not limited to demolition, grading, site improvement, building, and encroachment permits.	No later than 14 months from execution of OPA.
Execution of Public Improvement Agreement with City for completion of the Off-Site Public Improvements or payment of \$268,320 in lieu thereof and completion of the Private Improvements.	Prior to issuance of first building permit of Project.
Commence construction of the Project.	No later than 180 days from issuance of any construction permit (e.g., grading, improvement plans, building).
Establishment of a holding account by the Agency by which the silent second loan amount will be deposited and released during escrow.	No later than 60 days from the commencement of construction.
Recordation the Regulatory Agreement, Attachment No. 3.	No later than 90 days from the issuance of construction permits.
Submission of Final Disbursement Plan indicating location of the deed restricted units on the Site.	Upon submission of construction plans.
Completion of the Improvements	Prior to issuance of first certificate of occupancy or as specified in the Public Improvement Agreement.
Marketing of the deed restricted units.	Commence simultaneously with the marketing of the non-restricted units until the agreed upon amount has been sold.
Complete construction of project, City approval of all Final Inspections and Initial Acceptance of public improvements.	No later than 60 months from commencement of construction.

Action	Date
Recordation of Certificate of Completion.	Submission to the County Recorder's office no later than 30 days from the completion of construction of the Project.

ATTACHMENT NO. 8

FORM OF CERTIFICATE OF COMPLETION
(See Following Pages)

RECORDED REQUESTED BY
AND
WHEN RECORDED, RETURN TO:

Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)
(EXEMPT FROM RECORDING FEE PER GOV. CODE §6103)

CERTIFICATE OF COMPLETION OF CONSTRUCTION OF THE PROJECT.

WHEREAS, pursuant to an Owner Participation Agreement dated ____, ____, 2005 (the "OPA"), by and between the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS (hereinafter referred to as the "Agency") and SHAPELL INDUSTRIES OF NORTHERN CALIFORNIA, a division of Shapell Industries, a Delaware corporation (hereinafter referred to as the "Participant"), the Participant has developed or is developing that certain real property (the "Site") legally described in the attached Exhibit A by constructing, or causing to be constructed, the Project in two phases as required under the OPA; and

WHEREAS, pursuant to Section 219 of the OPA, promptly after completion of the construction and development of each phase of the the Project on the Site to be completed by the Participant and upon the written request by the Participant, the Agency is required to furnish the Participant with a Certificate of Completion; and

WHEREAS, the issuance by the Agency of the Certificate of Completion shall be conclusive evidence that the Participant has complied with the terms of the OPA pertaining to construction of Phase ___ of the Project upon the Site; and

WHEREAS, the Participant has requested that the Agency furnish the Participant with the Certificate of Completion; and

WHEREAS, the Agency has conclusively determined that construction of the Project as required by the OPA has been satisfactorily completed.

NOW, THEREFORE:

1. As provided in the OPA, the Agency does hereby certify that construction of Phase _ of the Project on the Site, as required by the OPA, has been fully and satisfactorily performed and completed.

2. With respect to Phase _ of the Project, and the portion of the Site upon which that Phase has been constructed, the OPA is therefore of no further force and effect, and all rights, duties, obligations and liabilities of the Agency and the Participant thereunder shall cease to exist. Any continuing and existing rights, duties, obligations and liabilities of the Agency and the Participant pertaining to the portion of the Site upon which the Project has been constructed are

provided in the Regulatory Agreement which shall be recorded concurrently with issuance of this Certificate of Completion.

3. This Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with or satisfaction of any obligation of the Participant to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the construction of the Project on the Site. This Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

IN WITNESS WHEREOF, the Agency has executed this Certificate of Completion as of this ____ day of _____, 2005.

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

By:

Chairman

By:

Secretary

“AGENCY”

ACCEPTED BY:

Milpitas Redevelopment Agency

By:

Title:

By:

Title:

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE